Supreme Court, U.S.
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OFFICE OF THE CLERK

No.___

IN THE

Supreme Court of the United States

EDWARD S. IRONS

Petitioner,

v.

ASOCIACION DE PROPIETARIOS DE
LA URBANIZACION DORADO REEF, INC.

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does 28 U.S.C. § 1447(d) divest a District Court of jurisdiction to revisit a remand order which is "'clearly erroneous and would work a manifest injustice'" pursuant to *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816-817 (1988) (citing *Arizona v. California*, 460 U.S. 605, 618, n. 8 (1983))?

2. Does an appellate judgment based on *de novo* findings violate due process?

3. Does 28 U.S.C. § 1447(d) divest a Court of Appeals of jurisdiction to consider evidence submitted pursuant to 28 U.S.C. § 2108 to establish the amount in controversy?

4. Are the Federal Courts required to preserve and maintain the integrity of the judicial system by full and reasoned adjudication on the merits based on all of the record evidence of a claim that judgment was unethically procured by counsel?

PARTIES

Petitioner, Edward S. Irons, is an individual.

Respondent, Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. (APUDRI), is a corporation of the Commonwealth of Puerto Rico. The APUDRI corporation's sole function is to administer the business affairs of Dorado Reef, a Puerto Rico housing development. Prior to October 2001, petitioner owned a housing unit in the Dorado Reef housing development. Petitioner is not now, nor has petitioner ever been a member of the respondent Asociacion.

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Petitioner, Edward S. Irons, respectfully petitions that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

There are no opinions below.

This Petition is directed to the March 8, 2002 "Judgment" (8a) of the Court of Appeals:

> Appellant's motion to extend the time to respond to this court's show cause order or to cancel or withdraw that order is denied. Instead we proceed to summarily affirm the October 11, 2001 order.
>
> We view the October 11, 2001 order, in which the district court indicated that it no longer had jurisdiction over the case because the case had been remanded to the

> Commonwealth court, as a denial of appellant's June 27, 2001 motion to vacate the August 25, 1999 remand order. For present purposes, we may accept the view that this court has jurisdiction to determine whether the district court had jurisdiction to reconsider the August 25, 1999 remand order. We conclude that the district court did not err, *FDIC v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979); *In re La Providencia Development Corp.*, 406 F.2d 251, 252 (1st Cir. 1969), and find no colorable basis to appellant's allegations of fraud.

This case is now pending *on remand* before the Puerto Rico Court of Appeals.

The "summarily affirm[ed]" October 11, 2001 Order (20a) of the District Court states:

> This Court entered an Order to Remand in this case on August 25, 1999 (Docket No. 10). After an Order to Remand is entered, the Court looses [sic] jurisdiction over the case. *See United States v. Rice*,[1] 327 U.S. 742 (1946). Mailing of the Order of Remand is considered the last act by which the Court divests itself of jurisdiction. *See Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217 (3d Cir. 1995).[2] Entry of the Order therefore vested jurisdiction in the state court.
>
> On September 26, 2001, this Court erroneously entered an Order granting a Motion for Leave to File a Reply Brief. This Order is hereby vacated. In addition, the Court instructs the parties in this matter to direct any and all further communication to the relevant state court.
>
> IT IS SO ORDERED.

---

[1] Under Section 2 of the Judiciary Act of 1887, 24 Stat. 552, a Court of Appeals may not review a District Court remand order by mandamus.

[2] Citing 28 U.S.C. §§ 1447(c) and (d).

JURISDICTION

The judgment of the Court of Appeals was entered on March 8, 2002. An order (1a) denying a petition for rehearing (5a) was entered on April 9, 2002. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The jurisdiction of the District Court was invoked under 28 U.S.C. § 1332(a).

The District Court held that it was divested of jurisdiction by its August 25, 1999 Order to Remand (72a).

The Court of Appeals held that it had "jurisdiction to determine whether the district court had jurisdiction to reconsider the August 25, 1999 remand order" (9a). Exercising such putative jurisdiction, the Court of Appeals held that "the district court did not err" (9a). The Court of Appeals divested itself of jurisdiction by so holding. It was, consequently, without any power to take *any action* whatever, other than to dismiss this appeal. *See Christianson, supra*, 486 U.S. at 818. Inconsistent with its summary affirmance, however, the Court of Appeals' judgment (8a) is improperly based on *de novo* appellate findings, that (i) the District Court's summarily affirmed disclaimer of jurisdiction was actually a ruling on the merits, to wit, a "*denial* of appellants' June 27, 2001 motion to vacate the August 25, 1999 remand order" and (ii) "we . . . find no colorable basis to appellants' allegation of fraud" (8a-9a) an issue squarely raised before the District Court, but which the District Court evaded by its disclaimer of jurisdiction which the Court of Appeals "summarily affirm[ed]".

This Petition seeks exercise of this Court's supervisory authority *first* to determine whether (i) the Court of Appeals March 8, 2002 judgment that summarily affirms the District Court's October 11, 2001 order that it (the District Court) *lacked* jurisdiction to reconsider its August 25, 1999 remand order is correct and, second, to determine (ii) whether the

March 8, 2002 judgment of the Court of Appeals (8a) is void to the extent that it is based on the aforesaid *de novo* appellate findings or otherwise reaches the *merits* of petitioner's claim.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the due process clause of the Fifth Amendment to the United States Constitution which provides that "[n]o person shall . . . be deprived of life, liberty or property without due process of law".

STATUTES INVOLVED

28 U.S.C. § 1447(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

28 U.S.C. § 2108 Where the power of the court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

STATEMENT OF THE CASE

A. District Court Proceedings (6/7/99 to 8/25/99)

1. The respondent's Spanish language complaint (89a to 93a; translation) was filed on February 16, 1999 in the Puerto Rico Superior Court. It was assigned Case No. DCD 99-0506(503). It was signed and filed by Mr. De La Cruz

Skerrett. It puts at least $200,000 in issue between the parties. According to his sworn testimony, Mr. Skerrett at the time he filed that complaint had been practicing law for 26 years and was a member of the bar of the First Circuit Court of Appeals and of the District Court of Puerto Rico (51a).

2. On or about June 7, 1999, petitioner removed DCD 99-0506(503) from the Puerto Rico Superior Court to the United States District Court for the District of Puerto Rico, where it was assigned Civil Action No. 99-1635(PG).

3. It is apparent from inspection of the Notice of Removal (81a) that it does *not* allege that the $75,000 amount in controversy required for federal jurisdiction (28 U.S.C. § 1332(a)) is provided by any "*counterclaim*" asserted by petitioner in response to APUDRI's removed complaint.

4. What the Notice of Removal (81a) *does show*—and this is the crux of one aspect of *this* case—*is that pursuant to respondent APUDRI's own removed complaint* in this action (89a), which Mr. Skerrett signed and filed in the Puerto Rico Superior Court, the amount that is really put in issue between the parties by that complaint includes petitioner's $200,000 damage claim against respondent which is set forth in a *previously-filed different case* pending in a *different court*, to wit Civil Action No. 24-99 (94a) (Exhibit 3 of the Notice of Removal), *filed by petitioner on January 4, 1999 in the Superior Court of the District of Columbia.*[3]

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[3] "The amount in controversy for jurisdictional purposes is measured by the direct pecuniary value of the right which the plaintiff seeks to enforce or protect." *Wright & Miller* §1307, citing *Department of Recreation and Sports of Puerto Rico v. World Boxing Assn.*, 942 F.2d 84 (1 Cir. 1991).

Respondent's removed Puerto Rico complaint "seeks to enforce or protect" its contention that petitioner's $200,000 damage claim alleged in Civil Action 24-99, then pending in the Superior Court for the District of Columbia, is "frivolous" and "without merit".

5. As regards the "amount in controversy", the Notice of Removal states:

> In particular, paragraph 17 of the complaint in *this [removed] Puerto Rico action* states:
>
> > 17. Defendants Irons have exceeded the limits when [they] filed a complaint in a court with lack of jurisdiction, Superior Court, Civil Section of the District of Columbia, under case No. 99-CA-000024. . . . In said complaint, the Irons . . . request remedies for damages against the Association.
>
> The "damages" as claimed *in the District of Columbia complaint (Ex. 3) total $200,000* [citing prayer paragraphs (e), (f) and (g) of Exhibit 3 to the Notice of Removal].
>
> * * *
>
> The plaintiff [respondent APUDRI] in the [removed] Puerto Rico action seeks a determination that the District of Columbia action [which asserts a $200,000 damage claim against APUDRI] "is frivolous[] and malicious[]" (complaint ¶ 17) and "without merit" (¶ 19) . . . . (83a to 84a; emphasis added.)

6. The Notice of Removal (81a) was marked as Exhibit 10 by the reporter on the deposition (56a) taken January 20, 2000 of the aforementioned Mr. Skerrett, counsel for respondent (*see* ¶ 1, *supra*, p.4).[4]

7. A copy of respondent's "Oposition [sic] to Removal" (79a) as filed on or about July 21, 1999 was marked as Exhibit 9 on the deposition (52a) of respondent's counsel, Mr. Skerrett, taken on January 20, 2000.

---

[4] The deposition of Mr. Skerrett was taken, pursuant to Court order, in the District of Columbia case, Civil Action 24-99. It has been relied upon in the Puerto Rico case without objection by respondent. Mr. Skerrett's deposition testimony appears, in part, at 50a to 56a.

8. Mr. Skerrett signed the "Oposition [sic] to Removal" (79a) and caused it to be filed in the District Court on or about July 21, 1999.

9. Paragraphs 4, 5 and 6 of the "Oposition to Removal" (80a), which Mr. Skerrett signed and filed, state:

> 4. Plaintiff opposes defendant's request for removal, since this Honorable Court lack[s] jurisdiction over the controversy.
>
> 5. In a frivolous attempt to obtain jurisdiction defendants have *filed a counterclaim* for alleged damages in excess of two hundred thousand dollars ($200,000.00), suffered as a result of Dorado Reef actions for collecting the moneys owed.
>
> 6. Even more, in order to meet the requirement of amount in controversy, defendant's [sic] alleges that, by December 31, 2003, plaintiff's claim will accumulate to the point that it will exceed seventy five thousand dollars ($75,000.00). Therefore, according to the allegations, the amount in controversy will exceed seventy five thousand dollars ($75,000.00).[5]

10. Mr. Skerrett *knew* when he signed and filed it that the statement made in paragraph 5 of the "Oposition [sic] to Removal" (80a) ("*[i]n a frivolous attempt to obtain jurisdiction* defendants have filed a counterclaim" (emphasis added); 80a) was false. See the Skerrett testimony at 55a quoted in ¶ 12, *infra*, pp. 8-10.

11. The knowingly false statement in paragraph 5 of the "Oposition to Removal" was that "*[i]n a frivolous attempt to*

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[5] In February 2001, to comply with an order of the Puerto Rico Superior Court on remand, respondent filed an "Informative Motion" (30a) in that Court in which it is said that petitioner's accrued liability, at that time, on respondent's claim as alleged in the complaint in this action exceeded $71,000. Petitioner's alleged liability was accruing at a rate in excess of $600.00 per month. *See* ¶ 33, *infra*, p. 15.

obtain jurisdiction defendants have filed a counterclaim for alleged damages in excess of two hundred thousand dollars" (80a). That statement was knowingly false because counsel who signed the "Oposition" then knew that defendant [petitioner] *did not*, by the Notice of Removal (81a), "attempt to obtain jurisdiction" on the basis of any "counterclaim". This knowingly false statement in paragraph 5 of the "Oposition to Removal" (80a) violated Rule 3.3 of the Rules of Professional Conduct because it is *in fact* a knowingly "false statement of [a *jurisdictionally*] *material fact*". The false statement was jurisdictionally "material" *because at the time* the false statement ("have filed a counterclaim") was made to the District Court in paragraph 5 of the "Oposition to Removal" (80a), *it was the law in the Puerto Rico District Court that "no part of the required jurisdictional amount may be met by considering a defendant's counterclaim, whether permissive or compulsory*". *Oliver v. Haas*, 777 F.Supp. 1040, 1042 (D.P.R. 1991) (citations omitted).

12. When confronted at his January 20, 2000 deposition with the Notice of Removal (81a) and also with the "Oposition" (79a), which he had signed and filed, Mr. Skerrett admitted that his statement in the "Oposition" that "defendants [in a frivolous attempt to obtain jurisdiction] have filed a counterclaim" is based solely on *petitioner's allegations in the previously-filed Civil Action 24-99* (94a) *pending in the District of Columbia Superior Court.*

Mr. Skerrett testified:

> MR. HILL: . . . To the witness, sir, could you state your name for the record?
>
> THE DEPONENT: José E. De La Cruz Skerrett.
>
> MR. HILL: Good morning, Mr. Skerrett. Do you solemnly swear to tell the truth and nothing but the truth to all questions posed by counsel this morning?
>
> THE DEPONENT: I do.

MR. HILL: So help you God. [50a to 51a]

* * *

MR. IRONS: I have a document entitled "Plaintiff's Opposition to Removal" to be marked--excuse me--I don't mean to throw things at you.

MR. HILL: What's the number of this one?

MR. IRONS: I don't know.

MR. HILL: Nine.

(WHEREUPON THE AFOREMENTIONED WAS MARKED AS EXHIBIT NUMBER NINE OF THIS DEPOSITION.)

BY MR. IRONS:

Q. *Did you sign this document and cause it to be filed*?

A. *Yes, sir.*

Q. Would you please read paragraph five on page number two when you have the right one before you? I will read it for purposes of record.

A. Yes.

MR. IRONS:

"In a frivolous attempt to obtain jurisdiction the defendants have filed a counterclaim for alleged damages in excess of two hundred thousand dollars (in words), $200,000.00 (in numbers), suffered as a result of Dorado Reef actions for collecting the monies owed."

THE DEPONENT: I have read the paragraph with you, yes.

BY MR. IRONS:

Q. Yes, thank you. My question is where in the notice of removal do you find any effort to base jurisdiction on any counterclaim?

A. You say on paragraph four, "*The damages as claimed in the District of Columbia complaint total two*

hundred thousand dollars. The plaintiff in that complaint seeks a judgment and then it is related."

That's where the two hundred thousand dollars came from.

Q. So there's no reference to—

THE DEPONENT: Sorry, sir, I must take this call. Excuse me. [51a to 52a; emphasis added.]

* * *

Q There is a section on page five [of the Notice of Removal] entitled "Short Statement of Grounds for Removal". I'm not restricting you to that, I'm simply inviting your attention to it.

A Based on this [Notice of Removal, 81a] document, the reference made to the two hundred thousand dollars claim is contained in [the Washington, D.C.] complaint Exhibit Three which you make reference to on page four. So there is a complaint made by you claiming two hundred thousand dollars in damages.

Q *But not a counter claim*?

A If—if I make a claim that you owe me money and you make a claim that me, who is suing you, have caused you damage for two hundred thousand dollars, that's a counter claim.

Q Let me try to—

A *If it's not made in the same case, there could be a problem with the construction of what is a claim or a counter claim.* [54a to 55a; emphasis added]

13. On *July 30, 1999*, because it did not clearly appear that the local rule of the Puerto Rico District Court permitted a reply by petitioner to the "Oposition to Removal" (which was *not* denominated a "*Motion* to Remand" or "Petition to Remand"), petitioner filed an alternative "Motion to Strike" the "Oposition" "*or Requesting Leave to Reply*" to it (75a).

14. On August 21, 1999, *without any prior notice to petitioner*, the District Court Judge (Gimenez) entered two handwritten margin orders.

15. The first margin order (73a) is written by the District Judge on the "Oposition to Removal" (79a). The District Court treated respondent's "*Oposition*" as a "*motion*" to remand, which it then *granted*—without permitting petitioner to reply. This first handwritten margin order states:

> Granted. Although technically the "dress" given by plaintiff to its *motion* [actually the "Oposition"] is incorrect, the spirit of *the motion is properly based on lack of jurisdictional amount at the time of removal.* The Court will look beyond "El habito" for it does not "_____" [illegible], and Grant plaintiff's request to Remand. [73a; Emphasis added.]

The margin order is silent as to the amount of $200,000 actually placed in controversy by the complaint. *See* note 3, *supra*, p. 5.

16. The *second* August 21, 1999 margin order written by the District Judge on petitioner's alternative "Motion to Strike Opposition or Requesting Leave to Reply" (74a) states:

> The Court accepts this Reply [actually a Motion to Strike Opposition *or for Leave to Reply*] for filing. The same is Denied. The Clerk is ordered to Remand this case to the Court of First Instance, Bayamon Part.

17. The District Court's two August 21, 1999 margin orders (73a to 74a)—each entered without notice to petitioner—*denied* petitioner any right to be heard on the merits of the "Oposition to Removal" (79a). In particular, these two margin orders barred petitioner from exposing the lie regarding a jurisdictionally material fact in paragraph 5 of the "Oposition", which "Oposition" the District Court treated as a motion and granted.

18. On August 25, 1999, the District Court entered a judgment (72a) "that the instant action is REMANDED . . . and the case is CLOSED".

19. On August 30, 1999, petitioner moved (68a) to stay the remand judgment because "defendants were denied any opportunity to be heard" (71a).

20. On September 7, 1999, petitioner moved, pursuant to Fed.R.Civ.P. 59(e) (65a), that the judgment entered August 25, 1999 be vacated, *inter alia*, because it denied due process to petitioner for lack of any right to be heard.

21. By simultaneous and separate orders dated November 19, 1999 (62a), the District Court summarily "denied" petitioner's motion to stay and petitioner's Rule 59(e) motion.

B. First Appeal No. 99-2265

22. On September 27, 1999, petitioner noticed an appeal (63a) from the August 25, 1999 remand judgment. The Notice of Appeal was amended on December 9, 1999 (60a to 61a).

23. On December 21, 1999, the Court of Appeals, citing 28 U.S.C. § 1292(a)(1) and § 1447(d), ordered petitioner to "show cause" why this appeal should not be dismissed for want of jurisdiction" (59a).

24. Petitioner's response to the show cause order (57a) filed January 10, 2000 explains that the remand judgment includes an "Issue" "4(ii)":

> 4. Whether the "Judgment" is void because the remand order and judgment . . . (ii) appear to have been wrongfully induced by an "Opposition" which seriously mischaracterizes the Notice of Removal, *inter alia*, by a material allegation which is contradicted by the face of the removal notice and by omission of any reference to the facts stressed in the Notice that the complaint on its face demonstrates satisfaction of the $75,000 amount in controversy and federal question prerequisites to federal jurisdiction. (57a to 58a)

25. Until February 1, 2000, the Court of Appeals was silent regarding petitioner's response to the show cause order (57a), including petitioner's contention that the remand order was wrongfully procured.

26. On February 1, 2000, the Court of Appeals filed a "Judgment" which "[d]ismissed" Appeal No. 99-2265:

> The district court determined that it lacked jurisdiction because the jurisdictional amount had not been satisfied, and it remanded the action to Commonwealth court. We lack jurisdiction over this appeal from the remand order and therefore dismiss the appeal. *Liberty Mutual Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 749 (3d Cir. 1995) ("district court's decision regarding Liberty Mutual's failure to establish the monetary amount essential to diversity jurisdiction is *precisely the type of routine and regular jurisdictional decision that . . . Congress expected the district courts to make in removal cases* and intended to insulate from challenge by enacting section 1447(d)"); 28 U.S.C. § 1447(d). (48a; emphasis added)

27. On February 14, 2000, petitioner filed a Petition for Panel Rehearing (45a) and a Declaration under 28 U.S.C. §§ 1728 and 2108 submitting evidence showing that the "amount in controversy" prerequisite to federal jurisdiction was and had always been satisfied. The Petition for Panel Rehearing states:

> Because the district court's jurisdictional amount determination was *not* a "routine and regular jurisdictional decision," [*Liberty Mutual, supra*] the Judgment should be reversed.
>
> In fact, the district court's jurisdictional amount determination granted the "Plaintiff's Opposition to Removal," but that Opposition *willfully* mischaracterizes the record by charging falsely that appellants "[i]n a frivolous attempt to obtain jurisdiction . . . have filed a counterclaim for alleged damages in excess of two

> hundred thousand dollars. . ." (§ 2108 Dec., Ex. C). This text is contradicted by the record which shows that no such counterclaim was filed. This incorrect representation is particularly insidious because counterclaims are usually excluded in "amount in controversy" determinations. (46a)

28. By order dated June 19, 2000 (44a), the Court of Appeals "denied" the Petition for Panel Rehearing:

> The petition for panel rehearing is denied. We are not persuaded by appellants' attempts to distinguish *Liberty Mutual Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742 (3d. Cir. 1995).

29. The Court of Appeals also *refused, sub silentio* (no order), even to consider petitioner's motion pursuant to Fed.R.App.P. 46(c) filed August 7, 2000 (43a) which requests the imposition of sanctions "because [APUDRI] has not informed the Court [of Appeals] that the District Court judgment remanding the removed action followed an 'Opposition' to removal known by counsel to be false at the time it was signed and filed".

30. By order dated December 11, 2000 (41a), the Court of Appeals denied petitioner's November 9, 2000 Motion (relying on evidence submitted pursuant to 28 U.S.C. § 2108) to Vacate Judgment Dismissing Appeal and to Remand (42a):

> Appellants' motion to vacate the February 1, 2000 judgment is denied. The statute on which appellants rely, 28 U.S.C. § 2108, is irrelevant because this court's jurisdiction does not "depend[] upon the amount or value in controversy." For the reason explained in this court's February 1, 2000 order, this court lacks jurisdiction [citing 28 U.S.C. § 1447(d)] to review the remand order regardless what the amount in controversy may be.

31. On February 9, 2001 (38a), the Court of Appeals *denied* Petitioner's Motion filed December 20, 2000 to vacate the judgment dismissing the appeal, to decide

petitioner's Fed.R.App.P. 46(c) motion, and to remand with instructions to the District Court to adjudicate, on its merits, petitioner's claim that the remand judgment was wrongfully procured by the false "Oposition to Removal" (79a).

C. Remand Proceedings In Puerto Rico Superior Court

32. Since sometime in 2001, the Puerto Rico Superior Court has been proceeding on remand. Petitioner moved to dismiss for lack of jurisdiction because the remand order was wrongfully procured without notice. The Puerto Rico Superior Court refused to read the petitioner's motion (*"There is a lot of the new, several pages which I didn't read since they talked about some fraud issues"*; see certified translation of March 21, 2001 hearing transcript (36a to 37a); emphasis added).

33. In March of 2001, respondent filed an "Informative Motion" (30a) in the Puerto Rico Superior Court. That motion claimed that petitioner owed respondent in excess of $71,000. The petitioner's alleged liability was, at that time, accruing at the rate in excess of $600.00 per month.

34. The Puerto Rico Superior Court entered a partial summary judgment in favor of respondent against petitioner for "maintenance fees". It also required petitioner to lodge a bond of $100,000 with the Court to secure respondent's claim if petitioner sold his Dorado Reef property.

35. The Puerto Rico Court of Appeals granted certiorari and heard argument on August 29, 2001.

36. The appeal is and has been *sub judice* since August 29, 2001.

D. Post-February 9, 2001 District Court Proceedings

37. On June 27, 2001, motivated in part by respondent's March 2001 admission (*see* ¶ 33) filed in the Puerto Rico Superior Court that the respondent's accruing claim against petitioner would surely exceed $75,000 (*see* ¶ 33), petitioner filed "Defendant's Motion to Vacate Remand Order" in the District Court (33a). According to that Motion, pages 2-3:

> The August 25, 1999 remand order is merely the law of the case. It may be revisited because it is "clearly erroneous" and is working "manifest injustice". *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816-817 (1988). See *Benson v. S.I. Handling Systems, Inc.*, 188 F.3d 780, 783 (7 Cir. 1999).[6]

The remand order was clearly erroneous because:

> (1) Plaintiff ("APUDRI") has now conceded that this Federal Court has always had exclusive subject matter jurisdiction over this case because the jurisdictional amount requirement has always been satisfied. Moreover, the Notice of Removal includes clear evidence that the amount in controversy requirement is satisfied by the APUDRI complaint in this action.
>
> (2) The remand order was entered after Court consideration of APUDRI's "Oposition [sic] to Removal". The Opposition successfully invokes misleading representations of fact and law to cover up the adequate jurisdictional amount showing which is set forth in the Notice of Removal.
>
> (3) The remand order violates due process because Irons was not permitted to be heard on the merits of the "Oposition [sic] to Removal". (34a)

---

[6] Actually, the remand order was not the law of the case because the law of the case assumes a hearing on the merits. *See United States v. Hatter*, 121 S.Ct. 1782, 1790 (2001).

38. On September 24, 2001, petitioner filed a Motion for Summary Judgment (26a) pursuant to Fed.R.Civ.P. 56 to vacate the remand order, together with a "Statement of Uncontested Facts". According to the Motion for Summary Judgment:

> Irons now submits this Motion for Summary Judgment to vacate the remand order (Exhibit 3) as improvidently granted. The remand is wrong because it is based on a Court-perceived *lack* of jurisdictional amount, whereas the facts (as plaintiff has now admitted and the Court of First Instance has recognized) have at all relevant times been otherwise. Moreover, the remand was wrongfully procured by the plaintiff's incorrect representations that the jurisdictional amount prerequisite was lacking, but the truth was and is otherwise. Plaintiff's counsel has repudiated his obligation of candor to the Court by failure to admit that the remand order was wrongfully procured and void. (27a)

(a) Pursuant to the local rules of the District Court, the Motion for Summary Judgment included an "Exhibit A—Statement of *Uncontested Facts* in Support of Defendant's Motion for Summary Judgment". That statement sets forth 17 *uncontested facts* as evidenced, in part, by:

Exhibit 1	Copy of Notice of Removal (Skerrett Deposition 10) (81a)
Exhibit 2	Copy of "Oposition to Removal" (Skerrett Deposition 9) (79a)
Exhibit 3	August 21, 1999 margin order written on "Oposition to Removal" (74a)
Exhibit 4	August 25, 1999 "Remand Judgment" (72a)
Exhibit 5	Deposition testimony of Mr. Skerrett, pages 1-2 and 86-94. 50a to 56a is a copy of pages 1, 4-5 and 86-94 of the Skerrett testimony.

(b) "*Uncontested Facts*" 7, 12, 12.1, 12.2 and 13 state:

> 7. Paragraph 5 of Exhibit 2 was *knowingly* false when Mr. De La Cruz Skerrett signed it because (i) the "Notice of Removal" (Exhibit 1) does *not* include any "counterclaim" and because (ii) the statement in paragraph 5 of Exhibit 2 that "defendants have filed a counterclaim for alleged damages in excess of two hundred thousand dollars ($200,000.00)" is actually contradicted by the Notice of Removal, Exhibit 1 hereof.
>
> * * *
>
> 12. Exhibit 5 is a copy of pages 1-2 and pages 86-95 of the deposition testimony of Mr. De La Cruz Skerrett given, under oath, on January 20, 2000.
>
> 12.1. In his Exhibit 5 sworn deposition testimony, Mr. De La Cruz Skerrett admitted under oath that the allegation in paragraph 5 of Exhibit 2 that "defendants [Irons] have filed a counterclaim" was knowingly not true.
>
> 12.2. Specifically, Mr. De La Cruz Skerrett admitted that the reference to $200,000 in paragraph 5 of Exhibit 2 "comes" from (p. 95, l. 14) the damage claim set forth in Irons' *D.C.* complaint in Civil Action 99-24, *i.e.*, *not* from any "counterclaim" filed by Irons in this Puerto Rico case DCD 99-506(503). See Exhibit 5, p. 88, ll. 4-9.
>
> 13. Paragraphs 4 and 5 of Exhibit 2 constitute "conduct having a purpose to deceive". Therefore, these paragraphs are "Fraud or Fraudulent" as those terms are defined in the "Terminology" section of the Rules of Professional Conduct.[7]

39. On September 26, 2001, respondent filed a Motion to Strike the Motion for Summary Judgment (24a), citing *inter alia* 28 U.S.C. § 1447(d).

---

[7] See the second quotation of this "uncontested fact" 13 as a part of ¶ 46, *infra*, p. 21.

40. Because respondent merely moved to strike (24a), but *did not oppose* the petitioner's Motion for Summary Judgment (26a) or *dispute any of the uncontested facts* (27a) submitted in support of that Motion, the said "uncontested facts" *stand admitted* by respondent.

41. By order dated September 28, 2001 (23a), the *magistrate judge* (not the *trial judge* Gimenez) granted petitioner's motion for leave to file a Reply Brief in Support of the June 27, 2001 Motion to Vacate the Remand Order (*see* ¶ 37).[8]

42. On October 1, 2001, petitioner citing Fed.R.Civ.P. 56(a) filed a "Motion to Decide Defendants' Unopposed Motion for Summary Judgment" and to "grant forthwith the requested summary judgment . . . because there is no genuine issue of material fact and [petitioner] is entitled to the judgment as a matter of law" (21a). At this point, petitioner was entitled, as a matter of law, to a judgment vacating the remand order (72a).

43. The ensuing October 11, 2001 order (20a) *sub silentio denied* the summary judgment to which petitioner was entitled. Furthermore, the October 11, 2001 order is silent as to and does not rule on the merits of (i) petitioner's motion to vacate (33a) *or* (ii) *petitioner's motion for summary judgment* (26a). Instead, the October 11, 2001 order avoids making any merits ruling whatever by a disclaimer of jurisdiction to do so, citing 28 U.S.C. §1447(d).

(a) Specifically, by its October 11, 2001 order (20a), the District Court held, citing a predecessor statute as applied by *United States v. Rice*, 327 U.S. 742 (1946), that 28 U.S.C. § 1447(d) divested that Court of any jurisdiction to adjudicate

---

[8] The October 11, 2001 order (20a) of Judge Gimenez vacates the September 28, 2001 order (23a) of the magistrate judge as *void* for lack of jurisdiction, citing 28 U.S.C. §1447(d).

petitioner's June 27, 2001 motion to vacate the remand order (33a) as "clearly erroneous" and as working a "manifest injustice".

E. Second Appeal, No. 01-2698

44. A Notice of Appeal (19a) (Appeal 01-2698) was filed October 31, 2001.

45. On January 9, 2002, the Court of Appeals entered an order (16a) which states:

> Upon review of the record in this case, it does not appear that this court has jurisdiction to consider the defendant's appeal from the district court order, entered in CA No. 99-1635 (D.P.R.) on October 11, 2001, instructing the parties to direct all filings to the court to which this case was remanded. 28 U.S.C. § 1292(a)(1), § 1447(d).
>
> Accordingly, appellant is ordered either to move for voluntary dismissal of the appeal, pursuant to Fed.R.App.P. 42(b), or to show cause, in writing, why this appeal should not be dismissed. . . . (16a)

46. On January 18, 2002, petitioner filed a "Motion . . . Responding to January 9, 2002 'Show Cause' Order" (10a).

(a) That motion requests that:

> (2) the January 9, 2002 show cause order be withdrawn in view of the "Extended Answers to 'Docketing Statement' Questions" (*Exhibit A hereof*) which show that [the October 11, 2001] order is "final" under § 1292(a)(1)] (10a)

(b) That motion also includes a "Statement of Facts" which point out that:

> 3. The Extended Answers state:
>
> * * *

II. *Issue*

> The dispositive issue on this appeal is whether 28 U.S.C. § 1447(d), which precludes review "of an order remanding a case to the state court from which it was remanded", bars District Court adjudication of a non-frivolous or "colorable" claim supported by record evidence, and [sic] that its Remand Order in this case is void because it was wrongfully procured.[9]

Subsequent sections of the Extended Answers demonstrate that the remand order was procured by fraud on the District Court. *See* Exhibit A, Section V, "Undecided Dockets 20 and 24", at *pages 6-14*. According to these pages—incorporated herein by reference:

> The Exhibit A Statement of Uncontested Facts in Support of Defendants' Motion for Summary Judgment (Docket 24) goes on to state:
>
> 13. Paragraphs 4 and 5 of Exhibit 2 constitute "conduct having a purpose to deceive". Therefore, these paragraphs are "Fraud or Fraudulent" as those terms are defined in the "Terminology" section of the Rules of Professional Conduct.

---

[9] The First Circuit, however, has held that if the moving party shows enough evidence to establish a "colorable" claim of fraud, the trial court has discretion to allow preliminary discovery and evidentiary proceedings to uncover further evidence of fraud. Thus, the First Circuit has rejected a "smoking gun" test, under which no preliminary discovery or evidentiary hearing would be allowed unless the party seeking relief first produced evidence that the adverse party had acted with intent to perpetrate a fraud. [Footnote citing *Pearson v. First NH Mortgage Corp.*, 200 F.3d 30, 34-35 (1st Cir. 1999) omitted.]

Moore's *Federal Practice* 3d § 60.43[4][a], p. 60-137.

That "purpose" was achieved by entry of the Remand Order. The Remand Order is void for fraud on the Court. (13a to 15a).[10]

47. On March 8, 2002, the Court of Appeals entered the "Judgment" (8a) to which this Petition is directed.

48. Petitioner's March 15, 2002 "Petition for Panel Rehearing" (5a) states:

> 1. The "Judgment" is not fair [*i.e.*, violates due process] because it is based upon a *de novo* mere generalization, lacking any citation of any law, precedent or evidence, that "we . . . find no colorable basis to appellant's allegations of fraud".
>
> This *de novo* finding is the more unfair because it does *not* identify *which* of "appellant's allegations" [including the "false counterclaim" representation] were considered and rejected, nor does it set forth any *reasons why* any of "appellant's allegations" were rejected.

49. Petitioner's March 23, 2002 letter to the Court of Appeals Clerk pursuant to Fed.R.App.P. 28(j) (2a) explains that:

> 2. The panel's *de novo* finding of "no colorable basis to appellant's allegations of fraud" conflicts with [*Francis v. Goodman*, 81 F.3d 5, 7-8 (1996)]. *Francis* states:
>
> > [A] suggestion that we engage in *de novo* review runs directly counter to Fed.R.Civ.P. 52(a) . . . as well as Supreme Curt precedent. *Maine v. Taylor*, 477 U.S. 131, 145, 106 S.Ct. 2440, 2450, 91 L.Ed.2d 110 (1986) ("as this Court frequently has emphasized, appellate courts are not to decide factual questions *de novo* reversing any findings they would have made differently") *rev'g United States v. Taylor*, 752 F.2d 757 (1 Cir. 1980).

---

[10] *See also* ¶ 37, *supra*, p. 16.

* * *

> *Were we to displace the district court from its fact-finding role*, but see *Taylor*, 477 U.S. at 145, 106 S.Ct. at 2450, *there would be no appellate review as a matter of right. Cf.* 28 U.S.C. § 1254(1) (1994); Sup.Ct.R. 10.1 (listing general considerations for granting a writ of certiorari). (3a; emphasis added)

50. The petition for panel rehearing was summarily "denied" by the Court of Appeals on April 9, 2002 (1a).

REASONS FOR GRANTING WRIT

1. In conflict with *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816, 817 (1988), the courts below have held that 28 U.S.C. § 1447(d) bars revisiting a *remand* judgment. No reasons for this holding are stated, other than the words of 28 U.S.C. §1447(d) itself and prior irrelevant rulings.

2. As construed and applied below as an absolute bar to revisit of a remand judgment entered without notice, 28 U.S.C. § 1447(d) violates due process. *See Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84-86 (1988) ("Failure to give notice violates 'the most rudimentary demands of due process of law'" quoting *Armstrong v. Mango*, 380 U.S. 545, 550 (1965)), and *Shaffer v. Heitner*, 433 U.S. 186, 217-218 (1977) ("The Due Process Clause affords protection against 'judgments without notice'" (Justice Stevens concurring), citing *International Shoe Co. v. Washington*, 326 U.S. 310, 324 (1945)).

3. As construed and applied below to bar any revisit of a remand judgment, 28 U.S.C. § 1447(d) sanctions knowing violation by counsel of the duty of candor to the tribunal not only as set forth in Rule 3.3 of the Rules of Professional Conduct, but also required "as a necessary protection of the decision-making process", and by "the broader general duty of candor and good faith required to protect the integrity of

the entire judicial process". *United States v. Schaffer Equipment Co.*, 11 F.3d 450, 458 (4 Cir. 1993), citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) and *Tiverton Board of License Commissioners v. Pastore*, 469 U.S. 238 (1965) ("[r]ebuking counsel for failing to comply with a duty of candor broader than Rule 3.3"). 11 F.2d at 458.

28 U.S.C. § 1447(d), as applied below, not only condones a knowingly false misrepresentation of a jurisdictionally material fact by counsel to the Court, but also condones enforcement of the wrongfully procured remand order. Indeed, 28 U.S.C. § 1447(d) as applied below, contrary to the interests of justice, condones and rewards procurement and enforcement of a judgment by conduct which trashes the general duty of counsel to preserve the integrity of the judicial system.

4. As regards question 4, the Fourth Circuit Court of Appeals has admonished that:

> Our adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process which is designed for the purpose of dispensing justice. . . . Even the slightest accommodation of deceit or lack of candor in any material respect quickly erodes the validity of the process. As soon as the process falters in that respect, the people are then justified on abandoning support for the system in favor of one where honesty is preeminent. . . . [I]t is important to reaffirm, on a general basis, the principle that lawyers, who serve as officers of the court, have the first line task of assuring the integrity of the process.

United States v. Schaffer Equipment Co., 11 F.3d 450, 457 (4 Cir. 1993).

Question 4 is presented by this case because the courts below have faltered by condoning "deceit and lack of candor" by counsel now benefiting from a remand judgment entered

after a false representation of a material jurisdictional fact to the District Court. This unethical conduct has repeatedly and consistently been covered up below. The cover-up takes different forms—all of which obscure what the lower courts have really decided. Rulings are made *sub silentio* and without any application of the facts to the law. Cover-up rulings are stated as mere generalizations or summarily, e.g., "denied". Issues squarely raised for decision are simply ignored

Nor is this case unique. As a former editorial features (op-ed) editor of the *Wall Street Journal* has observed: "Sure lawyers engage in unethical, slimy, underhanded behavior. (Are you surprised?) But lawyers profit from their behavior only when judges let them." [11]

A fresh decision by this Court reminding lawyers that they are "guardians of the law" is needed and is long overdue. So is a fresh decision which requires the courts rigorously to insist upon zero tolerance for lack of candor.

5. As regards question 2, in conflict with *Maine v. Taylor*, 477 U.S. 131, 145 (1986) ("appellate courts are not to decide factual questions *de novo*"), the Court of Appeals in this case "summarily affirm[ed]" a judgment based on two *de novo* fact findings that reach the merits of petitioner's case.

Review by this Court is needed to admonish the Court of Appeals that judgments based on *de novo* findings denying appellant an appeal as a matter of right are precluded by the due process clause. The Court of Appeals should be reminded that a lack of trial court findings necessary for review do not create jurisdiction to make or to base a judgment on *de novo* appellate findings. The correct procedure in such cases is to remand with instructions that the District

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[11] Boot, Max, *Out of Order-Arrogance, Corruption, and Incompetence on the Bench*, Basic Books, 10 E.53rd St., NY, pp. xvi-xvii (1998).

Court make the necessary findings and conclusions in strict conformity with Fed.R.Civ.P. 52(a). *See Pullman-Standard v. Swint*, 456 U.S. 273, 291-292, including n. 22 (1982).

6. As regards question 3, the Court of Appeals held that 28 U.S.C. §1447(d) divested it of jurisdiction to consider evidence submitted by petitioner pursuant to 28 U.S.C. § 2108. The submitted evidence established that the amount in controversy required for federal jurisdiction had, at all times, existed. As stated in paragraph 30, *supra*, of the "Statement of the Case":

> Appellants' motion to vacate the February 1, 2000 judgment is denied. The statute on which appellants rely, 28 U.S.C. § 2108, is irrelevant because this court's jurisdiction does not "depend[] upon the amount or value in controversy." For the reason explained in this court's February 1, 2000 order, this court lacks jurisdiction [citing 28 U.S.C.§ 1447(d)] to review the remand order regardless what the amount in controversy may be.

This ruling by the Court of Appeals that 28 U.S.C. § 1447(d) deprives petitioner of rights granted by 28 U.S.C. § 2108 is captious. Notably, the Court of Appeals' ruling was *summary*. No reasons whatever were given for it. In fact, 28 U.S.C. § 1447(d) and § 2108 were each adopted at the same time on June 25, 1948 as a part of the recodification of Title 28 of the United States Code. Each of these statutes was, in turn, a recodification of a prior statute without substantial change.

The Court of Appeals for the First Circuit has applied and enforced the predecessor to 28 U.S.C. § 2108, *i.e.*, 28 U.S.C. § 231. *See De La Torre v. National City Bank of New York*, 110 F.2d 381, 384 (1st Cir. 1939). The First Circuit explained that:

> This enactment confirmed the practice previously approved by the Supreme Court under which affidavits might be received by the appellate court to show the

> existence of jurisdictional amount in controversy where it did not otherwise appear in the record. . . . [I]t is clearly implied that such affidavits may be received after the appeal has been docketed and a motion to dismiss has been submitted. [citations omitted]

Certainly, it does not constitute a "review" within the meaning of 28 U.S.C. § 1447(d) of the prior remand judgment to permit the petitioner to show, pursuant to 28 U.S.C. § 2108, what was the truth at all relevant times, namely, that the amount in controversy requirement for federal jurisdiction was always satisfied. Without more, the remand judgment is void and the Superior Court of Puerto Rico has been proceeding on remand without jurisdiction.

The refusal of the Court of Appeals to obey 28 U.S.C. § 2108 is uniquely egregious because the District Court apparently was misled by counsel's false representation that petitioner relied on a "counterclaim" to establish the amount in controversy required for federal jurisdiction.

Respectfully submitted,

EDWARD S. IRONS *
3945-52nd Street, N.W.
Washington, D. C. 20016
(202) 362-5332

* Counsel of Record

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-2698

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff-Appellee,

v.

EDWARDS S. IRONS,
Defendant-Appellant,

MARY LEE IRONS,
Defendant.

Before: BOUDIN, *Chief Judge*, TORRUELLA and LIPEZ, *Circuit Judges.*

ORDER OF COURT

Entered: April 9, 2002

The petition for panel rehearing is denied.

By the Court:

Richard Cushing Donovan, Clerk

By: /s/ Janice M. O'Neil
JANICE M. O'NEIL
Chief Deputy Clerk

cc: Jose E. de la Cruz Skerrett
Edward S. Irons

LAW OFFICES OF

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March 23, 2002

Office of the Clerk
United States Court of Appeals
for the First Circuit
One Courthouse Way
Suite 2500
Boston, Massachusetts 02210

Re: Appeal No. 01-2698
Asociacion de Propietarios de la
Urbanizacion Dorado Reef, Inc. Appellee
v. Edward S. Irons, Appellant

Dear Sir:

Pursuant to Fed. R. Civ. Proc. 28(j), this letter advises the Clerk of the following authorities which came to appellant's attention after the Petition for Panel Rehearing was served and filed by mail on March 15, 2002:

> *Francis v. Goodman*, 81 F.3d 5, 7-8 (1996), citing *Maine v. Taylor*, 477 U.S. 131, 145, 108 S.Ct. 2440, 2450, 91 L.Ed.2d 114 (1986).

The "reasons for the supplemental authority" are that the panel decision conflicts with decisions of the Supreme Court and of this Court. Specifically:

1. The Petition for Panel Rehearing states:

> The "Judgment" is not fair because it is based upon a *de novo* mere generalization, lacking any citation of any law, precedent or evidence, that "we . . . find no colorable basis to appellant's allegations of fraud". (pages 1-2)

2. The panel's *de novo* finding of "no colorable basis to appellant's allegations of fraud" conflicts with *Francis*. *Francis* states:

> [A] suggestion that we engage in *de novo* review runs directly counter to Fed. R. Civ. Proc. 52(a) . . . as well as Supreme Court precedent. *Maine v. Taylor*, 477 U.S. 131, 145, 106 S.Ct. 2440, 2450, 91 L.Ed.2d 110 (1986) ("as this Court frequently has emphasized, appellate courts are not to decide factual questions *de novo* reversing any findings they would have made differently") *rev'g United States v. Taylor*, 752 F.2d 757 (1 Cir. 1980).
>
> * * *
>
> We now hold that the final sentence of Rule 52 (a) does not dispense with the requirement that the trial court make not only special findings as to the relevant disputed facts but also subsidiary conclusions of law as necessary to enable effective appellate review on motions to dismiss for lack of subject matter jurisdiction. *See Horizons Titanium Corp. v. Morton Co.*, 290 F.2d 421, 424, n. 3 (1 Cir. 1961) (noting that the last sentence of Rule 52(a) was "either poorly worded" or "too broad"); *see also 5A James W. Moore's Federal Practice* § 52.08 at 52-156-58 (2d 1995) (comparing Rule 52(a) and Rule 12 motions encompassing disputed issues of fact).
>
> * * *
>
> Were we to displace the district court from its fact-finding role, but see Taylor, 477 U.S. at 145, 106 S.Ct. at

2450, there would be no appellate review as a matter of right. Cf. 28 U.S.C. § 1254(1) (1994); Sup.Ct.R. 10.1 (listing general considerations for granting a writ of certiorari).

Very truly yours,

/s/ Edward S. Irons
EDWARD S. IRONS
First Circuit #81066

ESI-vgc

cc: Jose E. de la Cruz Skerrett

UNITED STATES COURT OFAPPEALS
FOR THE FIRST CIRCUIT

No. 01-2698

ASOCIACION DE PROPIETARIOS DE
LA URBANIZACION DORADO REEF, INC.
Plaintiff-Appellee,

v.

EDWARD S. IRONS,
Defendant-Appellant,

MARY LEE IRONS,
Defendant.

APPELLANT'S PETITION FOR PANEL REHEARING PURSUANT TO FED.R APP.P. 40 OF "JUDGMENT" ENTERED MARCH 8, 2002

Petitioner, defendant-appellant Edward S. Irons ("Irons"), requests panel rehearing of the March 8, 2002 "Judgment". Pursuant to Fed.R.App.P. 40, Irons states that he believes that the Court has overlooked or misapprehended the points of fact and law which establish that the March 8, 2002 "Judgment" is inappropriate because it is unfair and thus violates Irons' due process rights.[1]

I.

1. The "Judgment" is not fair because it is based upon a de novo mere generalization, lacking any citation of any law,

---

[1] The essential guarantee of the due process clause is one of fairness . . . ." Rotunda and Novak, *"Treatise on Constitutional Law"* 3rd, Vol. 3, § 17 (1999).

precedent or evidence, that "'we . . . find no colorable basis to appellant's allegations of fraud."

This *de novo* finding is the more unfair because it does not identify *which* of "appellant's allegations" were considered and rejected, nor does it set forth any *reasons why* any of "appellant's allegations" were rejected.

2. To "summarily affirm", the March 8, 2002 "Judgment" states:

> We view the October 11, 2001 order, in which the district court indicated that it no longer had jurisdiction over the case because the case had been remanded to the Commonwealth court, as a denial of appellant's June 27, 2001 motion to vacate the August 25, 1999 remand order.[2] . . . [Page-1].

Irons' June 27, 2001 Motion to Vacate the August 25, 1999 contends that:

> (2) The remand order was entered after Court consideration of APUDRI's "Oposition [sic] to Removal". The opposition successfully invokes misleading representations of fact and law to cover up the adequate jurisdictional amount showing which is set forth in the Notice of Removal.
>
> (3) The remand order violates due process because Irons was not permitted to be heard on the merits of the "Opposition [sic] to Removal". [page 2]

3. This Petition for Panel Rehearing requests clarification of the March 8, 2002 "Judgment" *at least to the extent of a clear statement by the Court as to whether the "undisputed facts" 4-7 and 13 set forth in the foregoing quotation from*

---

[2] The District Court did not "deny" Irons' motion, but instead refused to adjudicate it.

the "Extended Answers" were considered by the Court and rejected as constituting "no colorable basis for appellant's allegations of fraud".

4. Two possibilities exist.

(i) The first possibility is that the undisputed factual statements quoted from the "Extended Answers" *were not considered* by the Court. If so, the finding of "no colorable basis for appellant's allegations of fraud" should be vacated.

(ii) A second possibility is that the Court did, in fact, consider the "undisputed facts" quoted from the "Extended Answers", but nevertheless found "no colorable basis for appellant's allegations of fraud".

If so, the unlikely, but necessary, conclusion is that the March 8, 2002 "Judgment" condones and approves violations of, at least, Rules 3.3 (a) (1) and 8.4 (c) and (d) of the *Rules of Professional Conduct*:

> Rule 3.3. Candor toward the tribunal.
>
> (a) A lawyer shall not knowingly:
>
> (1) Make a false statement of material fact or law to a tribunal;
>
> * * *
>
> Rule 8.4. Misconduct.
>
> It is professional misconduct for a lawyer to:
>
> (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
>
> (d) Engage in conduct that seriously interferes with the administration of justice;

If that is, in fact, the Court's ruling, Irons due process rights are clearly violated, and the "Judgment" must be vacated.

* * * *

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-2598

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS,
Defendant, Appellant,

MARY LEE IRONS,
Defendant.

Before

Boudin, *Chief Judge*,
Torruella and Lipez, *Circuit Judges*.

JUDGMENT

Entered: March 8, 2002

Appellant's motion to extend the time to respond to this court's show cause order or to cancel or withdraw that order is denied. Instead, we proceed to summarily affirm the October 11, 2001 order.

We view the October 11, 2001 order, in which the district court indicated that it no longer had jurisdiction over the case because the case had been remanded to the Commonwealth court, as a denial of appellant's June 27, 2001 motion to vacate the August 25, 1999 remand order. For present purposes, we may accept the view that this court has

jurisdiction to determine whether the district court had jurisdiction to reconsider the August 25, 1999 remand order. We conclude that the district court did not err, *FDIC v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979); *In re la Providencia Development Corp.*, 406 F.2d 251, 252 (1st Cir. 1969), and find no colorable basis to appellant's allegations of fraud.

Affirmed. Loc. R. 27(c).

By the Court:

Richard Cushing Donovan, Clerk

By: /s/ Janice M. O'Neil
JANICE M. O'NEIL
Chief Deputy Clerk.

cc: Jose E. de la Cruz Skerrett
Edward S. Irons

Certified copies: Honorable Juan M. Perez-Gimenez and Ms. Rios de Moran, U.S.D.C. Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Appeal No. 01-2698

ASOCIACION DE PROPIETARIOS DE
LA URBANIZACION DORADO REEF, INC.
Plaintiff-Appellee,

v.

EDWARD S. IRON,
Defendant-Appellant,

MARY LEE IRONS,
Defendant.

MOTION BY DEFENDANT-APPELLANT RESPONDING TO JANUARY 9, 2002 "SHOW CAUSE" ORDER

Defendant-appellant Edward S. Irons (Irons), moves, in the alternative, that:

(1) the time for response to the January 9, 2002 Order "to show cause, in writing, why this appeal should not be dismissed [for lack of jurisdiction; 28 U.S.C. §§ 1292(a)(1) and 1447(d)]" be extended from January 23, 2002, the date now set for response, until ten (10) calendar days after final disposition of this Motion; *or*

(2) the January 9, 2002 show cause order be withdrawn in view of the "Extended Answers to 'Docketing Statement' Questions" (*Exhibit A hereof*) which show that

(i) the October 11, 2001 order from which this appeal is taken *is* a "final order" under 28 U.S.C. § 1292(a)(1) and that

(ii) this appeal presents *a new issue of law, i.e.*, "whether 28 U.S.C. § 1447(d), which precludes review 'of an order remanding a case to the state court from which it was remanded', bars District Court adjudication of a non-frivolous or 'colorable' claim supported by record evidence, and [sic] that its Remand Order in this case is void because it was wrongfully procured" (see Extended Answers, "Issue", pp. 3-4).[1]

STATEMENT OF FACTS IN SUPPORT OF MOTION

1. The January 9, 2002 show cause order states that it is based upon "a review of the record in this case". The "record in this case" was transmitted in two parts.

A first "Transmittal of Record to the Court of Appeals" dated November 30, 2001 states:

DOCUMENTS	VOLUMES
Docket Entries 26, 28, 30 33	I

A second "Transmittal of Supplemental Record to the Court of Appeals" dated *December 17, 2001* states:

DOCUMENTS	VOLUMES
Docket Entries 1-19	I
Docket Entries 20-34	II

[1] Although the Docketing Statement was opposed on other grounds, these key showings were not challenged by plaintiff-appellee. *See* "Opposition to Docketing Statement" served by mail on the "21 day of November 2001".

The Docketing Statement with "Extended Answers" was served and filed by Federal Express on *November 14, 2001*. Because the Docketing Statement with Extended Answers was filed on *November 15, 2001*—a *month before* the record in this case was completed by the December 17, 2001 Transmittal of the Supplemental Record—there is *concern* that the "Extended Answers" were *not considered before the January 9, 2002 show cause order was entered.* This concern is serious for two reasons.

First, the show cause order is silent as to the Extended Answers.

Second, the show cause order, in effect, grants *sub silentio* the plaintiff-appellee's "request" in the Opposition to Docketing Statement that "[t]his Honorable Court . . . instruct the Defendants-Appellants to voluntarily desist from their appeal at bar" [2] (Opp. 9).

2.The Extended Answers include Parts III and IV, pages 4-6, which state:

> III. *Extended Answer to Question B(1)*
>
> *The Appealed Order is a "Final Decision"—28 U.S.C. § 1291*—The October 11, 2001 Order is final for appealability purposes because it puts Irons "effectively out of court". *Moses H. Cone Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 9-10 (1982), citing and quoting *Idlewild Liquor Corp. v. Epstein*, 370 U.S. 713

---

[2] Actually, the appealed October 11, 2001 order makes little or no sense. The motion of defendant-appellant Irons, which the district court refused to consider, *seeks vacation of the remand order* because it was procured by fraud on the district court. If so the Commonwealth Court, "to which this case was remanded", is without any jurisdiction to consider it. Defendant-appellant Irons represents to this Court that the Commonwealth Court refused to consider a motion to dismiss for want of jurisdiction because the remand order is void for fraudulent procurement.

(1962). The Order expressly states that the District Court "divest[ed] itself of jurisdiction" by "[m]ailing of the Order of Remand". It "instructs the parties in this matter to direct any and all future communications to the relevant state court". The District Court Docket Proceedings (Exhibit 1) end with a "File Closed" "Case Flag". On November 7, 2001, the District Court enforced that instruction by an order rejecting Docket 25.

* * * *

Appellant Irons relies upon these showings in the "Extended Answers" to discharge so much of the January 9, 2002 show cause order as apparently rules that the order entered on October 11, 2001, from which this appeal is taken, is *not* "final" under 28 U.S.C. § 1292(a)(1) or the *Cohen* exception to finality.

The January 9, 2002 show cause order does not acknowledge the § 1292(a)(1) showing in the Extended Answers. Unless and until *reasons why* that showing is not dispositive of the § 1292(a)(1) issue, appellant Irons cannot effectively respond to the show cause order. Fairness, i.e., due process, entitles Irons to an opportunity to rebut the unstated *reasons why* the "final order" showing in the Extended Answers is deemed inadequate.

3. The Extended Answers state:

> Docket 20 (Motion to Vacate Remand Judgment Order) and Docket 24 (Motion for Summary Judgment "to vacate remand order (Exhibit 3) as improvidently granted") assert non-frivolous claims based on clear and convincing evidence of record that the Remand Order was wrongfully procured by appellee's misconduct, including fraud, on the District Court.

The appealed October 11, 2001 order (Docket 28) is a refusal to adjudicate the appellant's claim that the

> Remand Order was wrongfully procured. The refusal to adjudicate is based on 28 U.S.C. §§ 1447(c) and (d) as applied in *United States v. Rice*, 327 U.S. 742 (1946) and *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217 (3d Cir. 1995).
>
> II. *Issue*
>
> The dispositive issue on this appeal is whether 28 U.S.C. § 1447(d), which precludes review "of an order remanding a case to the state court from which it was remanded", bars District Court adjudication of a non-frivolous or "colorable" claim supported by record evidence, and [sic] that its Remand Order in this case is void because it was wrongfully procured.[1] [pages 3-4]

Subsequent sections of the Extended Answers demonstrate that the remand order was procured by fraud on the District Court. *See* Exhibit A, Section V, "Undecided Dockets 20 and 24", at *pages 6-14*.[2] According to these pages—incorporated herein by reference:

> The Exhibit A Statement of Uncontested Facts in Support of Defendants' Motion for Summary Judgment (Docket 24) goes on to state:
>
> 13. Paragraphs 4 and 5 of Exhibit 2 constitute "conduct having a purpose to deceive". Therefore, these paragraphs are "Fraud or Fraudulent" as those

---

[1] Actually, the statement in the January 9, 2002 show cause order that it does not appear that this Court has jurisdiction to consider appellant's appeal is concomitantly a ruling by this Court that a district court is barred by 28 U.S.C. § 1447(d) from any consideration of a contention that a remand order was procured by fraud practiced upon it.

[2] The district court has entered identical orders regarding each of Dockets 20 and 24 which state: "Please refer to the Court's earlier order (Docket No. 28) directing the parties to address all further communication in this matter to the Commonwealth Court".

> terms are defined in the "Terminology" section of the Rules of Professional Conduct.

That "purpose" was achieved by entry of the Remand Order. The Remand Order is void for fraud on the Court.

VI. *28 U.S.C. § 1447(d)*

To achieve the intent of Congress, this Court has construed 28 U.S.C. § 1447(d) strictly. The Court has held that "nothing could be more inclusive than the phrase 'on appeal or otherwise'" as used in 28 U.S.C. § 1447(d). *In re La Providence Development Corp.*, 406 F.2d 251 (1 Cir. 1969). *See also, FDIC v. Santiago Plaza*, 598 F.2d 634, 636 (1 Cir. 1979) ("the law in this circuit is that once a district court has decided to remand and has so notified the state court, the district court is without power to take any further action"), citing *In re La Providence, supra*, and *Hunt v. Aeromed Corp.*, 961 F.2d 1079 (3 Cir. 1992). *See also Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217 (3 Cir. 1995) cited by the appealed October 11, 2001 Order.

Certainly it was not the intent of Congress to immunize *fraudulent* procurement of a remand order. As this Court has also stated:

> It strikes us as elementary that a federal district court possesses the inherent power to deny the court's processes to one who defines the judicial system by committing a fraud on the court.

Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1 Cir. 1989). Exercise of that "inherent power" is appropriate in this case particularly because the fraud on the Court is not merely "colorable", but instead is shown by clear and convincing evidence that the appellee APUDRI willfully set in motion a scheme to interfere and which, in fact, did interfere with the District Court's ability impartially to adjudicate the case. *See Perez-Perez v. Popular Leasing, Inc.*, 993 F.2d 281, 285 (1 Cir. 1993). [pages 13-15]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-2698

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiff-Appellee

v.

EDWARD S. IRONS
Defendant-Appellant

MARY LEE IRONS
Defendant

ORDER OF COURT

Entered: January 9, 2002

Upon review of the record in this case, it does not appear that this court has jurisdiction to consider the defendant's appeal from the district court order, entered in CA No. 99-1635 (D. P.R..) on October 11, 2001, instructing the parties to direct all filings to the court to which this case was remanded. 28 U.S.C. § 1292(a)(1), § 1447(d).

Accordingly, appellant is ordered either to move for voluntary dismissal of the appeal, pursuant to Fed. R. App. P. 42 (b), or to show cause, in writing, why this appeal should not be dismissed. Failure to take either action by January 23, 2002 may result in dismissal of the appeal for want of diligent prosecution.

By the Court:

Richard Gushing Donovan, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-2698

ASOCIACION DE PROPIETARIIQS DE LA
URBANIACION DORADO REEF INC.
Plaintiff-Appellee

v.

EDWARD S. IRONS
Defendant-Appellant

JUDGMENT

Entered: January 9, 2002

It is ordered that the caption in the above mentioned case be amended to read as follows;

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiff-Appellee

v.

EDWARD S. IRONS
Defendant-Appellant

MARY LEE IRONS
Defendant

By The Court:

Richard Cushing Donovan,
Clerk

UNITED STATES DISTRICT COURT FOR
DISTRICT OF PUERTO RICO

[Filed Nov. 7, 2001]

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiffs

v.

EDWARD S. IRONS, *et al.*,
Defendants

MOTION	ORDER
Docket #25—Motion to Strike.	Please refer to the Court's earlier order (Docket No. 28) directing the parties to address all further communication in this matter to the commonwealth Court.

Date: November 5, 2001.

/s/ Juan M. Perez-Gimenez
JUAN M. PEREZ-GIMENEZ
U.S. District Judge

UNITED STATES DISTRICT COURT FOR
DISTRICT OF PUERTO RICO

Civ. No. 99-1635(P.G.)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiffs

v.

EDWARD S. IRONS, *et al.*,
Defendants

NOTICE OF APPEAL

To: The Honorable Juan M. Gimenez

Now comes defendant, Edward S Irons, appearing *pro se*, and respectfully informs and notifies as follows:

Notice is hereby given that defendant Edward S. Irons hereby appeals to the United States Court of Appeals for the First Circuit from the Order entered in this action on October 11, 2001.

/s/ Edward S. Irons
EDWARD S. IRONS
Appearing *Pro Se*
3945-52nd Street
(202) 362-5332-Phone
(202) 966-1338 fax

UNITED STATES DISTRICT COURT FOR
DISTRICT OF PUERTO RICO

[Received & Filed 10/11/01]

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiffs

v.

EDWARD S. IRONS, *et al.*,
Defendants

ORDER

This Court entered an Order to Remand in this case on August 25, 1999(Docket No 10.). After an Order to Remand is entered, the court looses jurisdiction over the case. *See United States v. Rice* 327 U.S. 742 (1946). Mailing of the Order of Remand is considered the last act by which the Court divests itself of jurisdiction. *See Trans Penn Wax Corp. v. McCandless*, 50 F. 3d 217 (3d Cir. 1995). Entry of the Order therefore vested jurisdiction in the state court.

On September 26, 2001, this Court erroneously entered an Order granting a Motion for Leave to File a Reply Brief. This Order is hereby vacated. In addition, the Court instructs the parties in this matter to direct any and all further communication to the relevant state court.

IT IS SO ORDERED.

San Juan, Puerto Rico, October 10th, 2001

/s/ Juan M. Perez Gimenez
JUAN M. PEREZ GIMENEZ
U.S. District Judge

UNITED STATES DISTRICT COURT FOR
DISTRICT OF PUERTO RICO

CIVIL DIVISION

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiffs

v.

EDWARD S. IRONS, *et al.*,
Defendants

MOTION TO DECIDE UNOPPOSED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND TO DENY PLAINTIFF'S MOTION TO STRIKE

Defendant Edward S. Irons now appears *pro se* and respectfully states, alleges and requests as follows.

1. On September 24, 2001, defendant Edward S. Irons, appearing *pro se*, filed his Motion for Summary Judgment.

2. On September 26, 2001, plaintiff filed a frivolous Motion to Strike that Motion for Summary Judgment.

3. Fed.R.Civ.P. 56 and the Local Rules of this Court require that a non-movant to a Motion for Summary Judgment sustain its burden of proof demonstrating that triable issues exist and that these issues be demonstrated in a "separate, short, and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried". *See* Local Rule 311.2.

The plaintiff's Motion to Strike does not controvert a single fact contained in the Irons' Motion for Summary Judgment. Hence, all of these facts are admitted for the purposes of the Summary Judgment Motion.

These admitted facts show that Irons is entitled to the requested judgment as a matter of law, Fed.R.Civ.P. 56(c), because:

- the remand order is clearly erroneous, is working a manifest injustice, and was wrongfully procured by plaintiff's incorrect jurisdictional amount representation to the Court, and
- the plaintiff has now admitted that the jurisdictional amount prerequisite to Federal jurisdiction has *always* been at issue in this case.

4. The Motion to Strike argues "that the motion for summary judgment should be stricken from the record since this Honorable Court's Remand order declaring lack of jurisdiction over the case constitutes res judicata" (page 1). That argument is *knowingly* false because the June 27, 2001 Motion to Vacate shows and the Motion for Summary Judgment repeats that the *remand order is not appealable*, and therefore is not *res judicata*.

UNITED STATES DISTRICT COURT FOR
DISTRICT OF PUERTO RICO

[Filed Sept 28, 2001]

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,

Plaintiffs

v.

EDWARD S. IRONS, *et al.*,

Defendants

MOTION	ORDER
Docket #23—Motion for Leave To File Reply Brief In Support of "Defendants'" Motion To Vacate Remand Order" And Proposed Reply Brief.	Defendants' Motion For Leave To File Reply Brief (Docket No. 23) is GRANTED. Plaintiffs may file a surreply within ten (10) days following the entry of this order. Said pleading shall not exceed ten (10) pages

Date: September 26th, 2001

/s/ Gustavo A. Gelpi
GUSTAVO A. GELPI
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 99-1635 (PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.
Plaintiff

vs.

EDWARD S. IRONS, MARY LEE IRONS, HIS WIFE AND THE
CONJUGAL PARTNERSHIP BETWEEN THEM
Defendants

Remanded Action for Collection of Monies [Removed from the Superior Court Of Puerto Rico, Bayamón Part Civil No. DCD 99-0506(503)]

MOTION TO STRIKE

TO THE HONORABLE COURT:

COMES NOW Plaintiff, Asociacion de Propietarios de la Urbanización Dorado Reef, Inc., through the undersigned attorney, and very respectfully states, alleges and prays as follows:

1. On September 24, 2001, the Defendant (hereinafter Irons) filed 'Defendants' Motion for Summary Judgment'. In summary, Irons' Motion requests that this Honorable Court's August 21, 1999 Remand Order to be vacated though an untimely dispositive motion. Plaintiff's (hereinafter APUDRI's) position is that the motion for summary judgment should be stricken from the record since this Honorable Court's Remand Order declaring lack of jurisdiction over the

case constitutes *res judicata. See Ticor Title Ins. co. v. Brown* (92-1988), 511 U.S. 117 (1994).

2. APUDRI respectfully submits the following motion to strike and/or request for leave to oppose to Irons' untimely dispositive motion once the "Defendants' Motion to vacate Remand Order", and "Brief Pursuant to L.R. 311.2 In Support of Defendants' Motion to Vacate Remand Order" are reviewed, to ensure the principles of comity, federalism and administration of justice and to contest Irons' fallacies.

Wherefore, we respectfully request from this Honorable Court to take notice of the above mentioned, and strike 'Defendants' Motion for Summary Judgment' from the record, and/or grant leave to oppose to Irons' untimely dispositive motion once the Defendants' motions to vacate the Remand order are reviewed.

In San Juan, Puerto Rico, this 26th day of September 2001,

I HEREBY CERTIFY that a true and exact copy of the foregoing have been sent by regular mail to Defendants': Edward S. Irons, 3945-52nd Street, N.W., Washington DC 20016.

DE LA CRUZ SKERRETT
PO Box 9020844
San Juan, Puerto Rico 00902-0844
Tel: 723-5500
Fax: 723-5746
jeds@dlcslaw.com

/s/ Roberto Cruz Hernandez
Roberto Cruz Hernandez
USDC/PR Attorney: 217006

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil Action 99-1635(PG)

CIVIL DIVISION

ASOCIACION DE PROPIETARIOS DE LA
URBANIZATION DORADO REEF, INC.
Plaintiff

v.

EDWARD S. IRONS, *et al.*
Defendants

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure defendant Edward S. Irons ("Irons"), appearing pro se, for his Motion for Summary Judgment states, alleges and requests as follows.

PROCEDURAL BACKGROUND

On or about February 16, 1999, Civil Action DCD 99-0506 (503) was filed in the Commonwealth of Puerto Rico, Court of First Instance, Bayamon Superior Court. On or about June 7, 1999, Irons removed DCD 99-0506(503) to the United States District Court for the District of Puerto Rico where it was designated Civil Action 99-1635(PG). On August 25, 1999, this Court remanded Civil Action 99-1635(PG) to the Court of First Instance. Defendant's Motion to Vacate Remand Order was filed on June 27, 2001. The plaintiff's Opposition was filed on or about July 3, 2001. Defendant's

Motion for Leave to File a Reply Brief in Support of the Notion to vacate and proposed Reply Brief was filed on or about July 18, 2001 and is pending.

MOTION FOR SUMMARY JUDGMENT

Irons now submits this Motion for Summary Judgment to vacate the remand order (Exhibit 3) as improvidently granted. The remand is wrong because it is based on a Court-perceived *lack* of jurisdictional amount, whereas the facts (as plaintiff has now admitted and the Court of First Instance has recognized) have at all relevant times been otherwise. Moreover, the remand was wrongfully procured by the plaintiff's incorrect representations that the jurisdictional amount prerequisite was lacking, but the truth was and is otherwise. Plaintiff's counsel has repudiated his obligation of candor to the Court by failure to admit that the remand order was wrongfully procured and void.

STATEMENT OF UNCONTESTED FACTS

Defendant's Statement of Uncontested Facts in support of this Motion for Summary Judgment is set forth in a separate document attached hereto as Exhibit A.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil Action 99-1635(PG)

CIVIL DIVISION

ASOCIACION DE PROPIETARIOS DE LA
URBANIZATION. DORADO. REEF, INC.
Plaintiff

v.

EDWARD S. IRONS, *et al.*
Defendants

BRIEF PURSUANT TO L. R. 311.2 IN SUPPORT
OF DEFENDANTS' MOTION TO VACATE
REMAND ORDER

Defendants (''Irons") have moved to vacate the August 25, 1999 remand judgment and order (DE 10) , and for the resumption and continuing exercise of exclusive subject matter jurisdiction over this case by this Federal Court.

PROCEDURAL BACKGROUND

On June 7, 1999, this case was removed from the Puerto Rico Court of First Instance. Exhibit 1 is a copy of the Notice of Removal. It was remanded on August 25, 1999 for a perceived lack of the required "jurisdictional amount''. Exhibit 2 (DE 10) is a copy of the remand judgment and order. On February 1, 2000, the First Circuit Court of Appeals, citing 28 U.S.C. § 1447(d), entered judgment (Exhibit 3) dismissing an appeal from the remand order for

lack of jurisdiction. The appellate court rejected Irons' attempts to avoid that ruling. The last appellate order was entered February 9, 2001 (Exhibit 4).

* * * *

Specifically, on February 22, 2001, to comply with an order issued February 15, 2001 by the Court of First Instance, APUDRI served and filed an Informative Motion (Exhibit 5 hereof is an English translation) which concludes with the statement:

> 6. In summary the defendant owes the plaintiff the amount of $71,825.14 for maintenance fees and litigation of four cases before four different courts.

"The amount in controversy for jurisdictional purposes is measured by the direct pecuniary value of the right which the plaintiff seeks to enforce or protect." Wright and Miller §3707, citing *inter alia, Department of Recreation and Sports of Puerto Rico v. World Boxing Assn.,* 942 F.2d 84 (1 Cir. 1991). Because APUDRI's claim is accruing in *monthly installments* of some $600 to $700 per month, the "Informative Motion" (Exhibit 5) is an admission that the pecuniary value of its claim as set forth in the complaint in this case exceeds $75,000.

These circumstances show, without more, that the remand judgment is wrong. This Motion to vacate the remand order should therefore be granted forthwith.

ESTADO LIBRE, ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA SALA
SUPERIOR DE BAYAMÓN

Civil No. DCD 99-0506(503)

About: Collection of Money

ASOCIACIÓN DE PROPIET ARIOS DE LA URBANIZACIÓN
DORADO REEF, INC.
DEMANDANTES,

V.

EDWARD IRONS, SU ESPOSA, MARY LEE IRONS, Y LA SOCIED
AD LEGAL DE GANANCIALES POR ELLOS
DEMADADES.

Translation of:
INFORMATIVE MOTION

(Received on February 22, 2001)

TO THE HONORABLE COURT:

Now comes the plaintiff in the captioned case through its undersigned counsel and respectfully informs and request as follows:

1. Last February 15, 2001, the subscribing party appeared at a status conference hearing in the captioned case. In such hearing the Honorable Court granted the request to continue the procedures in First Review. In addition, it orders the appearing party to submit a report regarding the debt in regards to maintenance fee installment of Mr. Edward S. Irons, including principal interests, cost and attorneys fees. Such information should be submitted in five(5) days, seeing that the defendant was obligated to consign in this Honorable Court the owed quantity in ten (10) days, [this is a

misrepresentation of the hearing seeing the Judge ordered consignment on April 6, 2001.] In compliance with the agreements reached in the last status conference we appear before this distinguished court.

2. To the date that this informative motion is executed the defendants Irons owe the plaintiff Association the total sum of $50,625.14, which balance is as follows:

Date of update	Maintenance fee balance	Interests	Total
Feb. 2001	$37,868.00	$12,747.14	$50,625.14

3. For the representation of Michael E. Veve of the firm lasa, Monroig & Veve on 2121 K Street N.W. Suite 800, Washington D.C. 20037, in the case *Mary Irons v. APUDRI* Case No.99-CA-0024, litigated in the Superior Court of the District of Columbia, the plaintiff paid $21,200.00 in expenses, costs and attorneys fees.

4. Regarding the firm De La Cruz Skerrett, the subscribing attorneys have represented the Association in three(3) cases, to wit:

The first case is *APUDRI v. Edward S. Irons*, Civil No. 99-2265, managed in the Federal District Court for the District of Puerto Rico, and in the Federal Court of Appeals for the First Circuit. In fact, on February 9, 2001 we received notice by the Court of Appeals denying the Second Motion to Vacate Judgment that was submitted. We expect that a third motion is not submitted nor that they appeal to the Supreme Court or the United States.

The second case retained by this office is the case of *Edward S. Irons v. APUDRI*, Civil No. 002187 (CC), litigated to this day in the Federal District Court for the District of Puerto Rico. In this case, the appearing party has not submitted to the jurisdiction of that court.

The third and last case that is at the same time the first, is the captioned. We refer to *APUDRI v. Edward Irons*, Civil No. DCD 99-0506 (503), litigated before this Honorable Court.

5. In the representation of the Association in these three case, our reprentatives has disbursed the amount of costs, expenses and attorneys fees, that are part of the contract of professional services-retainer.

6. In summary the defendant owes the plaintiff the amount of $71,825.14 for maintenance fees and litigation of four cases before four different courts.

Wherefore, we request that this Honorable Court take notice of the informed herein.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil Action 99-1635(PG)

CIVIL DIVISION

ASOCIACION DE PROPIETARIOS DE LA
URBANIZATION DORADO REEF, INC.
Plaintiff

v.

EDWARD S. IRONS, *et al.*
Defendants

DEFENDANTS' MOTION TO VACATE REMAND ORDER

Defendants ("Irons") move

(1) to vacate the remand judgment and order dated August 25, 1999 (DE 10); and

(2) that this Court forthwith initiate, exercise and continue to exercise exclusive subject matter jurisdiction over this case.

GROUNDS FOR THIS MOTION

This case was filed as DCD-99-0506(503) in the Puerto Rico Court of First Instance. It was removed on June 7, 1999. It was remanded for a perceived lack of jurisdictional amount on August 25, 1999.

On February 1, 2000, the First Circuit Court of Appeals, citing 28 U.S.C. §1447(d), entered judgment holding that it is without subject matter jurisdiction to entertain an appeal from

the August 25, 1999 remand judgment. On February 9, 2001, the First Circuit entered the last of a series of orders which maintained that jurisdictional ruling.

The August 25, 1999 remand order is merely the law of the case. It may be revisited because it is "clearly erroneous" and is working "manifest injustice". *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816-817 (1988). *See Benson v. S.I. Handling Systems, Inc.*, 188 F.3d 780, 783 (7 Cir. 1999).

The remand order was clearly erroneous because:

(1) Plaintiff ("APUDRI") has now conceded that this Federal Court has always had exclusive subject matter jurisdiction over this case because the jurisdictional amount requirement has always been satisfied. Moreover, the Notice of Removal includes clear evidence that the amount in controversy requirement is satisfied by the APUDRI complaint in this action.

(2) The remand order was entered after Court consideration of APUDRI's "Oposition [sic] to Removal". The Opposition successfully invokes misleading representations of fact and law to cover up the adequate jurisdictional amount showing which is set forth in the Notice of Removal.

(3) The remand order violates due process because Irons was not permitted to be heard on the merits of the "Oposition [sic] to Removal".

(4) For the reasons set forth in the Brief in Support of this Motion, the removal order has worked a manifest injustice because the Court of First Instance has denied due process to Irons. Specifically, that court has purported to grant a lengthy APUDRI motion for partial summary judgment only minutes after it was filed and served at a March 21, 2001 hearing noticed for another purpose. This procedure effectively denied Irons any right to be heard with respect to the apparent

misrepresentations of fact and law set forth therein. The so-called "Partial Judgment" entered by the Court of First Instance is void for lack of jurisdiction.

RELIEF REQUESTED

The relief requested is an order

(1) that vacates the August 25, 1999 remand judgment and order ab initio,

(2) pursuant to which this court forthwith resumes and will continue to exercise exclusive subject matter jurisdiction of this case.

Pursuant to and consistent with L.R. 311.2, this Motion is accompanied by a Brief.

/s/ Edward S. Irons
EDWARD S. IRONS
Appearing *Pro Se*
3945-52nd Street
(202) 362-5332-Phone
(202) 966-1338 fax

COMMONWEALTH OF PUERTO RICO
COURT OF ORIGINAL PART
BAYAMON SUPERIOR PART

CIVIL NO: DCD-1999-0506

HOMEOWNERS ASSOCIATION DORADO REEF DEVELOPMENT

Plaintiff

vs.

EDWARD IRONS

Defendant

HEARING

Today, March 21, 2001, starting at 1:30 p.m., in the Bayamón Court of Original Part, Courtroom 503, proceeded with the follow up hearing above indicated on the case cited.

* * * *

There is a lot of the new, several pages which I didn't read since they talked about some fraud issues, about how someone lied or something. I am not going to go into that, because I have no opinion on that. If the esquires want this court to take the ten issues that are not in controversy and resolve based upon those ten facts not in controversy, esquire, plaintiff part and you said yes, defendant part.

* * * *

STENOGRAPHER'S CERTIFICATION OF RECORD

I, *EUNICE VAQUEZ*, Record Stenographer from the firm MARTINEZ & ARROYO INTERNATIONAL REPORTING, INC. P.O. BOX. 902678, San Juan, Puerto Rico. I certify:

That the proceeding is the exact and correct copy from the record taken by the stenographer subscribing during said deposition; And so that it is so certified, the present is signed today, day from del year, in san Juan, Puerto Rico.

Signature

RECORD STENOGRAPHER

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS,
Defendants, Appellants.

Before Selya, *Circuit Judge*, Campbell, *Senior Circuit Judge*, and Lipez, *Circuit Judge*.

ORDER OF COURT

Entered: February 9, 2001

Appellants' motion to vacate judgment dismissing appeal and to remand is denied.

By the Court:

Phoebe Morse
Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS,
Defendants, Appellants.

DEFENDANTS-APPELLANTS' MOTION TO VACATE JUDGMENT DISMISSING APPEAL AND TO REMAND

NOW APPEAR Defendants-appellants, Edward S. Irons and Mary Lee Irons (hereinafter "Irons"), by and through its undersigned counsel, and respectfully state, allege, and request as follows:

This motion is filed because this Court's December 11, 2000 order is apparently inconsistent with its July 19, 2000 order with respect to whether 28 U.S.C. § 2108 is relevant to this case and with respect to how 28 U.S.C. §§ 1447(d) and 2108 are to be jointly construed to implement the intent of both statutes.

To harmonize these inconsistencies and harmonize §§ 1447(d) and 2108, Irons move:

(1) to vacate the February 1, 2000 judgment dismissing this appeal;

(2) to remand this case to the district court with authorization and instructions to take such action as

it deems necessary (including consideration and adjudication of a motion by Irons based on newly discovered evidence or fraud by analogy to FRCP 60 [1] to vacate that court's August 25, 1999 remand order) to determine whether that order was not "routine and regular" and, hence, excluded from § 1447(d)'s appeal bar; and

(3) for the entry of an order deciding appellants' motion pursuant to FRAP 46(c) filed August 7, 2000.[2]

---

[1] FRCP 60 provides that motions pursuant to its provisions and which raise issues of newly-discovered evidence or fraud should be filed within one year after the judgment, order or proceeding was entered or taken. In this case, the inconsistency between the Court's July 19 and December 11, 2000 orders with respect to whether the § 2108 evidence would be considered on this appeal is sufficient to show why no FRCP 60 motion was previously filed.

[2] The Rule 46(c) motion is viable whether or not § 2108 is "relevant" as stated in the December 11, 2000 order.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS,
Defendants, Appellants.

Before Torruella, *Chief Judge*, Selya and Lipez, *Circuit Judges.*

ORDER OF COURT

Entered: December 11, 2000

Appellants' motion to vacate the February 1. 2000 judgment is denied. The statute on which appellants rely, 28 U.S.C. § 2108, is irrelevant because this court's jurisdiction does not "depend[] upon the amount or value in controversy." For the reason explained in this court's February 1, 2000 order, this court lacks jurisdiction to review the remand order regardless what the amount in controversy may be.

By the Court:

Phoebe D. Morse,
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACIÓN DE PROPIETARIOS DE LA
UPBANIZACIÓN DORADO REEF, INC.,
Plaintiff Appellee

v.

EDWARD S. IRONS; MARY LEE IRONS
Defendants-Appellants.

DEFENDANTS-APPELLANTS' MOTION
TO VACATE JUDGMENT DISMISSING APPEAL

NOW APPEAR Defendants-appellants, Edward S. Irons and Mary Lee Irons (hereinafter "Irons"), by and through its undersigned counsel, and respectfully state, allege, and request as follows:

Irons move to vacate the February 1, 2000 judgment dismissing this appeal. The judgment cannot stand until the Court considers and files an opinion that addresses the evidence timely submitted under 28 U.S.C. § 2108 which shows that the jurisdictional amount is satisfied.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF, INC.,
Plaintiff Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS
Defendants-Appellants.

APPELLANTS' MOTION PURSUANT TO F.R.A.P. 46(c)

Rule 46(c) Federal Rule of Appellate Procedure states:

> A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practice before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

This motion requests the imposition of sanctions pursuant to Rule 46 (c) because Plaintiff-Appellee has not informed the Court that the District Court judgment remanding the removed action followed an "Opposition" to removal known by counsel to be false at the time it was signed and filed. This violation of the duty of candor will apparently result in an equally flawed dismissal of this appeal.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS,
Defendants, Appellants.

ORDER OF COURT

Entered: June 19, 2000

Before Selya, *Circuit Judge*, Campbell, *Senior Circuit Judge*, and Lipez, *Circuit Judge*

The petition for panel rehearing is denied. We are .not persuaded by appellants' attempts to distinguish Liberty *Mutual Ins. Co.*, v. *Ward Trucking, Corps.*, 48 F. 3d 742 (3d. Cir. 1995).

By the Court:

Phoebe D. Morse, Clerk

By: Janice M. O'Neil
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No.: 99-2265

ASOCIACIÓN DE PROPIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,
Plaintiff-Appellee,

v.

EDWARD S. IRONS, MARY LEE IRONS,
Defendants-Appellants.

PETITION FOR PANEL REHEARING (FRAP 40) [1]

Appellants petition for panel rehearing of the Judgment entered February 1, 2000. According to the Judgment:

> The district court determined that it lacked jurisdiction because the jurisdictional amount had not been satisfied, and it remanded the action to the Commonwealth court. We lack jurisdiction over this appeal from the remand order and therefore dismiss the appeal. *Liberty Mutual Ins. Co.* v. *Ward Trucking Corp.*, 48 F.3d 742, 749 (ed Cir. 1995)("district court's decision regarding Liberty Mutual's failure to establish the monetary amount essential to diversity jurisdiction is precisely the type of routine and regular jurisdictional decision that . . . Congress expected the district courts to make in removal cases and intended to insulate from challenge by enacting section 1447(d)"); 28 U.S.C. § 1447(d)

---

[1] This petition relies upon the record on this appeal and the concurrently-filed Declaration of Edward S. Irons submitted pursuant to 28 U.S.C. §§ 1728 and 2108.

I.

Because the district court's jurisdictional amount determination was not a "routine and regular jurisdictional decision," the Judgment should be reversed.

In fact, the district court's jurisdictional amount determination granted the "Plaintiffs Opposition to Removal," but that Opposition willfully mischaracterizes the record by charging falsely that appellants "[i]n a frivolous attempt to obtain jurisdiction . . . have filed a counterclaim for alleged damages in excess of two hundred thousand dollars . . ." (§2108 Dec., Ex. G). This text is contradicted by the record which shows that no such counterclaim was filed. This incorrect representation is particularly insidious because counterclaims are usually excluded in "amount in controversy" determinations.

* * * *

> Plaintiff's Opposition to Removal (§ 2108 Dec., Ex. C) states:
>
> 5. In a frivolous attempt to obtain jurisdiction defendants have filed a counterclaim for alleged damages in excess of two hundred thousand dollars ($200,000.00), suffered as a result of Dorado Reef actions for collecting the moneys owed. (p. 2)

In his deposition given January 20, 2000, Jose E. De La Cruz Skerrett, who signed both the complaint in this action and the Plaintiff's Opposition to Removal, admitted that the counterclaim representation in paragraph 5 of the Opposition is false and that the complaint in this action which he also signed puts at least $200,000 in controversy—precisely as the Notice of Removal points out.

Exhibit B of the § 2108 declaration is a copy of pages I-6 and 86-97 of the Skerrett deposition taken January 20, 2000.

* * * *

Thus, Mr. De La Cruz Skerrett has testified that the jurisdictional amount is satisfied by the complaint in this Puerto Rico action which he signed and filed—just as the Notice of Removal explains.

II.

Exhibit E to the § 2108 declaration reports a conversation between counsel for appellants and Mr. Diego Chevere, President of appellee. The letter states that Mr. Chevere advised appellants' counsel that the appellee's "Board had appropriated the sum of $180,000 to cover any legal fees which might be incurred in litigation the matter with Mrs. Irons and you" (p. 2). When asked at his deposition taken on January 20, 2000 if such an appropriation had been made by the Board, the witness Chevere was instructed not to answer.

It would be financially and logically senseless for the Board to appropriate $180,000 to defend a lawsuit in which the amount in controversy is less than $75,000.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF INC.,
Plaintiff, Appellee,

v.

EDWARD S. IRONS; MARY LEE IRONS,
Defendants, Appellants.

Before: SELYA, *Circuit Judge*, CAMPBELL, *Senior Circuit Judge*, and LIPEZ, *Circuit Judge*.

JUDGMENT

Entered: February 1, 2000

The district court determined that it lacked jurisdiction because the Jurisdictional amount had not been satisfied, and it remanded the action to Commonwealth court. We lack jurisdiction over this appeal from the remand order and therefore dismiss the appeal. *Liberty Mutual Ins. Co.* v. *Ward Trucking.Corp.*, 48 F.3d 742, 749 (3d Cir. 1995) ("district court's decision regarding Liberty Mutual's failure to establish the monetary amount essential to diversity jurisdiction is precisely the type of routine and regular jurisdictional decision that . . . Congress expected the district courts to make in removal cases and intended to insulate from challenge by enacting section 1447(d)"); 28 U.S.C. § 1447(d) .

Dismissed.

By the Court:

Phoebe Morse
Clerk

Certified Copies: Hon. Judge Juan Perez-Jiminez, Clerk Frances Rios de Moran.

cc: Messrs. Hill-Tollinche, Indiano-Viviv, Weinstein-Bacal, De La Cruz Skerrett

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CIVIL NO: 99-24

MARY L. IRONS,

Plaintiff,

vs.

ASOCIACION DE PROPIETARIOS LA URBANIZACION DORADO REEF, INC.

Defendant.

DEPOSITION OF MR. JOSE E. DE LA CRUZ SKERRETT

BE IT REMEMBERED that pursuant to Notice of Taking of Deposition, and on the twentieth day of January, 2000, beginning at the hour 8:35 A.M., thereof at the offices attorney Edward W. Hill Tollinche, Indiano, Williams & Weistein-Bacal, Hato Rey Tower, 21st Floor, 268 Muños Rivera Avenue, San Juan, Puerto Rico, the attorney Edward S. Irons, the deposition was held.

[4] MR. HILL: Good morning to everybody. For the record, this is Edward Hill. I'm a notary duly authorized in the state of Puerto Rico to conducts oaths. I will perform the oath for the court reporter.

Ms. Court Reporter, do you solemnly swear to transcribe these proceedings to the best of your ability?

THE COURT REPORTER: I so swear.

MR HILL: So help you God.

To the witness, sir could you state your name for the record?

THE DEPONENT:

José E. De La Cruz Skerrett.

MR. HILL: Good morning, Mr. Skerrett. Do you solemnly swear to tell the truth and nothing but the truth to all questions posed by counsel this morning?

[5] THE DEPONENT: I do.

MR. HILL: So help you God.

* * * *

[6] JOSE E DE LA CRUZ SKERRETT

AFTER HAVING BEEN duly sworn and cautioned to tell the truth, the whole truth and nothing but the truth, upon oral examination testified at follows:

DIRECT EXAMINATION

BY MR. IRONS:

Q Please state you name?
A José E. De La Cruz Skerrett.
Q You're a lawyer, is that correct?
A Yes.
Q Before what courts are you admitted to practice?
A Puerto Rico and the United States District Court and the Court of Appeals for the First Circuit.
Q How long have you been engaged in the practice of law?
A Twenty-six years.
Q And have you spent most of that time in practice in Puerto Rico or a substantial part of it done elsewhere?
A In Puerto Rico.

* * * *

[86] MR. IRONS: I have a document entitled "Plaintiff's Opposition to Removal" to be marked Exhibit—excuse me—I don't mean to throw things at you.

MR. HILL: What's the number of this one?

MR. IRONS: I don't know.

MR. HILL: Nine.

(Whereupon the aforementioned was [87] marked as Exhibit Number Nine of this deposition.)

BY MR. IRONS:

Q Did you sign this document and cause it to be filed?

A Yes, sir.

Q Would you please read paragraph five on page number two when you have the right one before you? I will read it for purposes of record.

A Yes.

MR. IRONS: "In a frivolous attempt to obtain jurisdiction the defendants, have filed a counterclaim for alleged damages in excess of two hundred thousand dollars (in words), $200,000.00 (in numbers), suffered as a result of Dorado Reef actions for collecting the monies owed."

THE DEPONENT: I have read the paragraph with you, yes.

BY MR. IRONS:

Q Yes, thank you. My question is where in the [88] notice of removal do you find any effort to base jurisdiction on any counterclaim?

A You say on paragraph four, "The damages as claimed in the District of Columbia complaint total two hundred thousand dollars. The plaintiff of that complaint seeks a judgment and then it is related."

That's where the two hundred thousand dollars came from.

Q So there's no reference to—

THE DEPONENT: Sorry, sir, I must take this call. Excuse me.

MR. IRONS: Off the record.

(OFF THE RECORD)

BY MR. IRONS:

Q I want to make my question to you quite specific so we don't misunderstand each other.

This paragraph says what it says, I'm not going to read it again.

MR. VEVE: Sir, off the—

(OFF THE RECORD)

[89] BY MR. IRONS:

* * * *

I ask you please to look at the Notice of Removal and tell me where in that notice any counter claim is relied upon in an attempt to obtain jurisdiction?

A Sir, you're just giving me one document and you are trying for me to limit myself to that document.

Q That's right.

A And I don't—I suppose that before this motion was drafted, which was drafted by an associate for my signature, I do not know what other documents were taken into consideration for that allegation to be in there.

Q Well, the question we're trying to make as narrow as possible and I'm trying to be unpretentious. But this is in opposition and I have only question. And it is based on the notice of removal, it isn't based on anything else.

In that notice, do you find any attempt to obtain jurisdiction based on any counter claim?

A The only—

[90] MR. VEVE: Let me just make an objection here. You're relating to a removal motion and to an opposition to removal

motion and a claim or a counter claim in that on a matter before the U.S. District Court in Puerto Rico.

I'm going to object, allow him to answer, but this has nothing to do with the allowable discovery in this case from the D.C. Superior Court in Washington. But go ahead and answer.

THE DEPONENT: Again, I don't have the full file with me.

BY MR. IRONS:

Q The question is limited only to this notice of removal, no other document.

A This document has nine pages.

Q I would like an answer to the question.

A This has nine pages, as I said. If the question is limited, what in this document notice of removal dated—no date—

Q Perhaps I can help you.

[91] A There is no date.

Q There is a section on page five entitled "Short Statement Of Grounds For Removal." I'm not restricting you to that, I'm simply inviting your attention to it.

A Based on this document, the reference made to the two hundred thousand dollars claim is contained in complaint Exhibit Three which you make reference to on page four. So there is a complaint made by you claiming two hundred thousand dollars in damages.

Q But not a counter claim?

A If—if I make a claim that you owe me money and you make a claim that me, who is suing you, have caused you damage for two hundred thousand dollars, that's a counter claim.

Q Let me try to—

A If it's not made in the same case, there could be a problem with the construction of what is a claim or a counter claim.

Q I would hopefully make this my last question. Let me see if I can state it precisely.

The only basis that you see in the document which is the Notice For Removal for the statement in paragraph five of Plaintiff's Opposition To Removal, is found under [91] the heading, First Ground, on page five of the Notice of Removal, is that correct?

A Page four.

Q Okay.

A It says here two hundred thousand dollars. Here, sir.

Q This is the only basis?

A Total two hundred thousand dollars.

Q This is the only basis, right?

A In the document that you are limiting my answer to be—

Q Yes.

A —in regard to this document and the two hundred thousand dollar figure comes—is referred to in page four and is in regard to an Exhibit Three which is the complaint you have made against the association claiming two hundred thousand dollars in the Washington case.

Q And that's the only basis that you see on paragraph five of the Notice of Opposition?

A No. That's what I am telling you, that I might not answer—I cannot answer the question that that is the only base because I don't have the full file with me.

Q The only basis you see in this specific document—

[93] A The only reference made to a two hundred thousand dollars claim action by you, it is in this document on page four. I don't see that two hundred thousand dollar figure in any other place in this document.

MR. IRONS: We have no more questions.

MR. VEVE: Thank you very much, I have no other questions.

* * * *

[94] MR. IRONS: I ask the reporter to mark the document entitled, "Notice of Removal" which has been put before the witness and about which he has testified as Exhibit Ten.

(Whereupon the aforementioned was marked as Exhibit Number ten of this deposition.)

(Whereupon the deposition was terminated at 11:30 A.M. and the deponent was excused.)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 99-2265

ASOCIOACIÓN DE PROPIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,
Plaintiff-Appellee,

v.

EDWARD S. IRONS, MARY LEE IRONS,
Defendants-Appellants.

APPELLANTS' RESPONSE TO
DECEMBER 21, 1999 "SHOW CAUSE" ORDER

* * * *

STATEMENT OF ISSUES

1. Whether the August 25, 1999 "Judgment" (DE 10) which states.

The Court having entered an order remanding this case to the Court of First Instance, it is hereby;

ORDERED and ADJUDGED that the instant action is REMANDED to the Court of First Instance and the case is CLOSED;

is "final" under 28 U.S.C. § 1292(a)(2).

* * * *

4. Whether the "Judgment" is void because the remand order and judgment

* * * *

(ii) appear to have been wrongfully induced by an "Opposition" which seriously mischaracterizes the Notice of Remand, *inter alia*, by a material allegation which is

contradicted by the face of the removal notice and by omission of any reference to the facts stressed in the Notice that the complaint on its face demonstrates satisfaction of the $75,000 amount in controversy and federal question prerequisites to federal jurisdiction.

STATEMENTOF CASE [1] AND OF RELEVANT FACTS

---

[1] Facts set forth in this Statement are taken from the record and translation of the record of that action filed in the District Court of Puerto Rico pursuant to its Local Rule 108 (DE 9). Additional facts are taken from the undisputed allegations of the Notice of Removal and the Exhibits 1, 2, and 3 (the appellants' Washington, D.C. complaint upon which paragraph 17 of the complaint in this action relies) which form a part of that Notice. These removal allegations and exhibits may be considered as true and authentic because they are not disputed by the appellee or the District Court. *See*, generally, Moore's *Federal Practice* 3rd Ed. § 101.14[e][g] and *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 179 (1936).

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[Filed December 21, 1999]

No. 99-2265

ASOCIATION DE PROPIETARIOS DE LA UNBANIZACION DORAFO REEF, INC.,
Plaintiff-Appellee,

v.

EDWARD S. IRONS, MARY LEE IRONS,
Defendants-Appellants.

ORDER OF THE COURT

Upon review of the record in this case, it does not appear that this court has jurisdiction to consider this appeal, because the remand order, entered on September 27, 1999, appears to be an unappealable interlocutory order. 28 U.S.C. §§ 1292(a)(1); 1447(d). *Nasuti v. Scannell*, 792 F.2d 264 (1st Cir. 1986).

Accordingly, we order appellants either to move for voluntary dismissal of this appeal pursuant to Fed. R. App. P. 42(b) or to show cause, in writing why this appeal should not be dismissed. The failure to take either by January 4, 1999 may lead to dismissal of the appeal for lack of prosecution.

By the Court:
Phoebe Morse, Clerk

By: /s/ Janice M. O'Neil
JANICE M. O'NEIL
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
OF PUERTO RICO
FOR THE DISTRICT OF PUERTO RICO

[Filed Dec. 9, 1999]

Civil No. 1635 (PG)

Removed Action for Damages
[Removed from the Superior Court of Puerto Rico:
Civ. No. DCD 99-0506 (503)]

ASOCIACIÓN DE PROPIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,

Plaintiff,

v.

EDWARD S. IRONS, MARY LEE IRONS, his wife and the Conjugal Partnership between them,

Defendants.

DEFENDANTS' AMENDED NOTICE OF APPEAL

TO: The Honorable Juan Pérez Giménez,
United States District Judge

COME NOW Defendants Edward S. Irons and Mary Lee Irons (hereinafter "Irons"), by and through their undersigned attorneys, and respectfully inform and notify as follows:

Notice is hereby given that Edward S. Irons and Mary Lee Irons, collectively the defendants in the captioned case, hereby appeal to the United States Court of Appeals for the First Circuit from the judgment entered in this action on August 25, 1999, and from the orders entered in this action on November 18, 1999, (i) denying defendant's Motion for Stay of Remand and (ii) denying defendants' Motion

Pursuant to Rule 59(e) to Alter or Amend Judgment filed August 25, 1999.

WHEREFORE, it is respectfully requested that this Honorable Court, take notice of Irons' appeal of this Honorable Court's judgment dated August 25, 1999, and the denial of defendants' motion to alter or amend judgment dated November 18, 1999.

In San Juan, Puerto Rico, this 9th day of December, 1999.

I HEREBY CERTIFY that of this date a true and faithful copy of this motion was sent to José E. De La Cruz Skerrett, PO Box 9020844, San Juan, Puerto Rico 00902-9844.

INDIANO, WILLIAMS & WEINSTEIN-BACAL
268 Ave. Muñoz Rivera
Hato Rey Tower, Suite 2101
San Juan, Puerto Rico 00918
Tel: (787) 754-2323
Fax: (787) 766-3366

/s/ Stuart A. Weinstein-Bacal
STUART A. WEINSTEIN-BACAL
USDC No. 204208

/s/ Edward W. Hill
EDWARD W. HILL
USDC No. 213614

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

[Filed Nov 19, 1999]

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.,
Plaintiff

v.

EDWARD S. IRONS, *et al.*,
Defendant(s)

MOTION	ORDER
DOCKET #11-Defendants' Motion for Stay of Order of Remand, etc.	DENIED.
Docket #12-Opposition to Defendant's Motion for Rule 11 Sanctions	GRANTED.
Docket #14-Defendants' Motion Pursuant to Rule 59(e) to Alter Or Amend Judgment Filed August 25, 1999	DENIED.

Date: November 18, 1999

/s/ Juan M. Perez Gimenez
JUAN M. PEREZ GIMENEZ
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
OF PUERTO RICO
FOR THE DISTRICT OF TUERTO RICO

[Filed Sept 27, 1999]

Civil No. 99-1635(PG)

Removed Action for Damages
Removed from the Superior
Court of Puerto Rico:
Civ. No. DCD 99-0506 (503)]

ASOCIACION DE PROPIET ARIOS DE
LA URBANIZACION DORADO REEF, INC.,
Plaintiff,

v.

EDWARD S. IRONS MARY LEE IRONS, his wife and the
Conjugal Partnership between them,
Defendants.

DEFENDANTS' NOTICE OF APPEAL

TO: The Honorable Juan Perez Jimenez

United States District Judge

COMES NOW Defendants Edward S. Irons and Mary Lee Irons (hereinafter "Irons"), by and through their undersigned attorneys, and respectfully inform and notify as follows:

Notice is hereby given that Edward S. Irons and Mary Lee Irons, collectively the defendants in the captioned case hereby appeal to the United States Court of Appeals for the First Circuit from the judgment entered in this action on August 25, 1999.

WHEREORE, it is respectfully requested that this Honorable Court, be informed and take notice of Irons appeal of this Honorable Court's judgment dated August 25, 1999.

In San Juan, Puerto Rico, this 27th day of September 1999.

IN THE UNITED STATES DISTRICT COURT
OF PUERTO RICO
FOR THE DISTRICT OF TUERTO RICO

[Filed Sept 7, 1999]

Civil No. 99-1635(PG)

Removed Action for Damages
Removed from the Superior
Court of Puerto Rico:
Civ. No. DCD 99-0506 (503)]

ASOCIACION DE PROPIET ARIOS DE
LA URBANIZACION DORADO REEF, INC.,
Plaintiff,

v.

EDWARD S. IRONS MARY LEE IRONS, his wife and the
Conjugal Partnership between them,
Defendants.

DEFENDANTS' MOTION PURSUANT TO RULE 59(e)
TO ALTER OR AMEND JUDGMENT
FILED AUGUST 25, 1999

To: The Honorable Juan Perez Gimenez
United States District Judge

COME NOW Defendants Edward S. Irons and Mary Lee Irons (collectively "Irons"), by and through their undersigned attorneys, and respectfully state, allege, and request as follows:

A. PROCEDURAL BACKGROUND

1. On June 7, 1999, Irons, pro se, filed a timely Notice of Removal of Civil Num. DCD 99-0506(503) which had been

filed by the above-captioned plaintiff on February 16, 1999, in the Superior Court of Bayamon (hereinafter the "Superior Court") (and served by publication upon the Irons in May 1999), and duly served a copy of the Notice of Removal upon counsel for plaintiff in the Superior Court case by mail on that same day, June 7, 1999. Removal was effected on that date as a matter of law. 28 U.S.C. § 1446.

2. Three days later, on June 10, 1999, the Irons filed their Answer to the Complaint, and filed a Counterclaim, all in the instant removed proceeding before the Honorable Court.

* * * *

Therefore, defendants concurrently request leave to seek discovery from plaintiff. Defendants also rely on the ensuing grounds 2, 3 and 4. These grounds are *not* subject to the "no review" bar of 28 U.S.C. § 1447(d) *because they do not seek review of the Court's ruling that the Opposition to Removal is "properly based on lack of jurisdictional amount at the time of removal"*. Quite to the contrary, these grounds 2, 3 and 4 contend that the Remand Order and the Judgment are *void ab initio* because they deny defendants their Constitutional rights to procedural due process and to a jury trial.

Ground 2. Procedural Due Process-Denial of Right to be heard on Merits of Jurisdictional Amount Issue.

Procedural Backgound, paragraph 5, p. 5, *supra*, and the Motion to Stay both show that defendants timely requested leave to *reply* to the plaintiff's "Opposition," should it be treated by the court as a *motion* to remand. The Court did indeed treat the "Opposition" as a "*motion*" to remand, but concurrently "accept[ed]" the Irons request for leave to reply to such a "motion" as itself a "reply". The Court thus denied defendants' request to be heard on the merits of the remand issue before the marginal remand order was entered on August 21, 1999.

For these reasons, the Remand Orders and the Judgment deprive procedural due process.

Ground 3: Procedural Due Process-Denial of Right to be Heard-Fed.R.Civ.P.11.

The "Opposition to Removal" invites the incorrect premise that the jurisdictional amount claims of the Removal Notice are limited to the plaintiff's claim for maintenance fees in the amount of $26,010.71 The truth is otherwise.

* * * *

IN THE UNITED STATES DISTRICT COURT
OF PUERTO RICO
FOR THE DISTRICT OF PUERTO RICO

Civil No. 99-1635(PG)

Removed Action for Damages
[Removed from the Superior
Court of Puerto Rico:
Civ. No. DCD 99-0506 (503)]

ASOCIACION DE PROPIET ARIOS DE
LA URBANIZACION DORADO REEF, INC.,
Plaintiff,

v.

EDWARD S. IRONS MARY LEE IRONS, his wife and the
Conjugal Partnership between them,
Defendants.

DEFENDANTS MOTION FOR STAY OF ORDER OF REMAND AND TO RECONSIDER THE COURT'S ORDER DENYING MOTION REQUESTING LEAVE TO REPLY OR TO OPPOSE

TO: The Honorable Juan Perez Gimenez
United States District Judge

COME NOW Defendants Edward S. Irons and Mary Lee Irons(hereinafer the "Irons"), by and trough their undersigned attorneys, and respectfully state, allege, and request as follows:

A. PROCEDURAL BACKGROUND.

1. On June 7, 1999, the Irons, *pro se,* filed a timely Notice of Removal of Civil Num. DCD 99-0506 (503), which had been filed by the above-captioned plaintiff on February 16,

1999, in the Superior Court of Bayamon (hereafter the "Superior Court") (and seved by publication upon the Irons in May 1999), and duly served a copy of the Notice of Removal upon counsel for plaintiff in the Superior Court case. Removal effected on that date as a matter of law. 28 U.S.C. § 1446.

* * * *

5. On August July 26, 1999, the Court issued an Order scheduling a Status Conference for September 15, 1999.

6. On August July 26, 1999, plaintiff impertenently filed in the Superior Court, a court which had been divested of jurisdiction over any controversy between plaintiff and the Irons by means of Notice of Removal, a *Mocion Sometiendo Certification Sobre Publicacion de Edictos y Solicitando La Anotacion di Rebeldia.*

7. On August 20, 1999, the Irons moved for sanctions against plaintiff pursuant to Fed.R.Civ.P. 11 (by "Defendants Motion"), because APUPRI had knowingly made false statements in its July 26, 1999, *mocion* before the Superior Court. On August 23, 1999, pursuant to the Local Rules of Court Rule 108(1), the Irons moved to submit the complete Superior Court record along with certified translation of all the papers therein.

8. On August 21, 1999 (entered on the docket on August 22, 1999, and received by the Irons on August 25, 1999), this Honorable Court entered two handwritten margin orders (hereafter collectively referred to as the "Remand Order"). In the first order, the Court treated Plaintiff's Opposition as a "motion," to remand, which it then granted, as "properly based on lack of jurisdictional amount at the time of removal." In the second order, the Court denied defendants' motion which it "accep[ed]" as a "reply for filing" to Plaintiff's Opposition (which it had treated as motion to remand), and ordered the Clerk "to remand this case to the

Court of First Instance, Bayamon Part." By so doing, this Honorable Court deprived the Irons of their right to be heard on the merits of the removal issue before the Remand Orders were entered, all as requested in the second alternative of the Defendants' Motion."

9. Irons, therefore, requests that this Honorable Court: (a) stay its Remand Orders, (b) reconsider or amend its order denying the Irons their right to address the jurisdictional amount issue and thereby sustain their burden to show the amount in controversy is in excess of the jurisdictional amount, and (c) deny "Plaintiff's Opposition."

B. JURISDICTION TO CONSIDER THIS MOTION.

This Honorable Court has jurisdiction to consider this motion because no certified copy of the Remand Orders had been sent to the Clerk of the Superior Court at the time that this motion was filed. *Trans Penn Wax Corp. v. McCandless,* 50 F.2d 217,225 (3d Cir. 1995) (emphasis supplied):

> *But the physical mailing to the certified copy is the key jurisdictional event to divest the district court of jurisdication, because a remand order is not self-executing. Hunt v. Acromed Corp., 961 F.2d at 1081 (citing Bucy v. Nevada Constr. Co., 125 F.2d 213 (9th Cir. 1942).*

C. GROUNDS IN SUPPORT OF THIS MOTION.

The Irons respectfully submit that this Honorable Court's Remand Orders are improvident because the required "amount in controversy" *is* established by the *undisputed* jurisdictional fact allegations set forth in their Notice of Removal, which must be deemed true.

The Remand Orders are improper because:

(a) defendants were affirmatively denied any opportunity to be heard before the Remand Orders were entered by the denial of their timely Defendants' Motions; and

(b) remand would *deprive* defendants of their Constitutional right to a jury trial.

* * * * *

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civ. No. 99-1635(PG)

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION
DORADO REEF, INC.,

Plaintiff,

v.

EDWARD S. IRONS, *et al.*,

Defendants.

JUDGMENT

The Court having entered an order remanding this case to the Court of First Instance, it is hereby

ORDERED and ADJUDGED that the instant action is REMANDED to the Court of First Instance and the case is Closed.

San Juan, Puerto Rico, August 25, 1999.

/s/ Juan M. Perez-Gimenez
JUAN M. PEREZ-GIMENEZ
U.S. District Judge

8/21/99 ORDER

The Court accepts this Reply for filing. The same is Denied. The Clerk is ordered to Remand this case to the Court of First Instance, Bayamon Part.

/s/ Juan Perez-Gimenez
JUAN M. PEREZ-GIMENEZ
U.S. District Judge

8/21/99 ORDER

Granted. Although technically the "dress" given by plaintiff to its motion is incorrect, the spirit of the motion is properly based on lack of jurisdictional amount at the time of removal. The Court will look beyond "El habito" for it does not "____" [illegible], and Grant plaintiff's request to Remand.

/s/ Juan Perez-Gimenez
JUAN PEREZ-GIMENEZ
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
OF PUERTO RICO
FOR THE DISTRICT OF PUERTO RICO

Civil No.: 99-1635 (PG)

Removed Action for Damages [Removed from the Superior Court of Puerto Rico: Civ. No.: DCD 99-0506 (503)]

ASOCIACIÓN DE PROPIETARIOS DE LA URBANIZACIÓN DORADO REEF, INC.,

Plaintiff,

v.

EDWARD S. IRONS, MARY LEE IRONS, his wife and the conjugal partnership between them,

Defendant.

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S OPPOSITION OR REQUESTING LEAVE TO REPLY TO PLAINTIFF'S OPPOSITION FOR REMOVAL

TO: The Honorable Juan Pérez Jiménez

United States District Judge

COMES NOW Defendants Edward S. Irons and Mary Lee Irons (hereinafter "Irons"), by and through their undersigned attorneys, and respectfully state, allege and request as follows:

On February 16, 1999, plaintiff Asociación de Propeitarios de la Urbanzación Dorado Reef, Inc. (hereinafter "APUDRI"), filed an action seeking to collect sums allegedly owed to it by Irons, in the Bayamón Section of the Court of First Instance of the Commonwealth of Puerto Rico. Because Irons resides in Washington, D.C., a Notice of Removal was

filed pursuant to 28 USC § 1332(c) because the citizenship of Irons is different from that of plaintiff and therefore diversity is present.

By virtue of 28 USC § 1441(b), cases between citizens of different states filed in a state forum may be removed to a federal court except when properly joined with a defendant of that state. In this case there is complete diversity between Irons and plaintiff, as noted from the time of the filing of the complaint.

The notice of removal was filed by Irons, *pro se*, because of want of adequate legal representation in this jurisdiction. On July 15, 1999, undersigned counsel appeared on behalf of Irons simultaneous with plaintiff's filing of a pleading entitled "Plaintiff's Opposition to Removal" which was plaintiff's "opposition" to Irons' Notice of Removal. The "opposition" is allegedly based on the insufficient jurisdictional amount for diverse actions necessary for jurisdiction of the Federal Court and concedes to diversity. Because of the simultaneous filings of these motions, undersigned counsel did not receive the "Opposition" to removal until July 23, 1999.

A defendant may remove an action pending in a state court to a federal court by filing a *notice* of removal, signed and including a statement of the grounds of removal. 28 USCA § 1446(a). If it clearly appears on the face of the notice of removal that the defendant makes a showing that removal is proper, then removal is proper. See 28 USCA § 1446(c)(5). Upon removal, a plaintiff can then move to remand the case if there is a defect in the removal procedure. 28 USCA § 1447(c). An "opposition" to a notice of removal is not the proper procedure.

On the face of Irons' Notice of Removal, Irons meets the requirements of 28 USCA § 1441, not only because defendants are citizens of another state, but because the amount in

controversy meets the jurisdictional amount, as addressed in the Notice of Removal. It is this element of § 1441, the jurisdictional amount, that plaintiff contests and argues that Irons does not meet. The claim invoked against Irons is an installment based obligation, which continues to accrue indefinitely. Therefore, a determination that Irons is indebted to plaintiff would necessarily implicate an amount which far exceeds the jurisdictional amount required, and is not merely the sum that plaintiff reflects as owed in its complaint.

Plaintiff filed an opposition to removal, an improper procedural vehicle, not a petition to remand. Therefore, it should be stricken from the record.

Yet, because a motion and its "opposition" have been filed by the parties, the Local Rules of the Court, in particular LR 311.7, do not permit the filing of a reply, except upon the granting of leave by the Court. Irons, therefore, requests leave to reply to the "opposition" in order to address and defend their compliance with the second tier of § 1441(b), and demonstrate, if the Court deems it necessary, that they have met the jurisdictional amount requirement. If the Court treats the "opposition" filed by plaintiff as a motion for remand, which is not prayed for, then Irons requests leave to oppose said motion within ten (10) days from the date of the Court's order so deciding.

WHEREFORE, it is respectfully requested that this Honorable Court, strike APUDRI's opposition because it is filed contrary to procedure and grant the relief set forth in Irons' Notice of Removal, or if the Honorable Court entertains APUDRI's opposition, then grant Irons leave to reply to the APUDRI's opposition pursuant to Local Rule 311.7, or if the Honorable Court treats APUDRI's opposition as a motion for remand, then grant Irons leave to oppose.

In San Juan, Puerto Rico, this 30th day of July, 1999.

I HEREBY CERTIFY that of this date a true and faithful copy of this motion was sent to José E. De La Cruz Skerrett, PO Box 9020844, San Juan, Puerto Rico 00902-0844.

INDIANO, WILLIAMS & WEINSTEIN-BACAL
268 Ave. Muñoz Rivera
Hato Rey Tower, Suite 2101
San Juan, Puerto Rico 00918
Tel: (787) 754-2323
Fax: (787) 766-3366

/s/ Stuart A. Weinstein-Bacal
STUART A. WEINSTEIN-BACAL
USDC No.: 204208

/s/ Edward W. Hill
EDWARD W. HILL
USDC No.: 213614

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Exhibit No. 9]

Case No. 99-1635

ASOCIACION DE PROPIETARIOS DE LA URBANIZACION DORADO REEF, INC.
Plaintiff-Respondent,

v.

EDWARD S. IRONS, MARY LEE IRONS, his wife and the conjugal partnership between them,
Defendants-Petitioners.

PLAINTIFF'S OPOSITION TO REMOVAL

TO THE HONORABLE COURT:

COMES NOW, plaintiff through its undersigned legal counsel, and respectfully States and Prays:

1. On June 7, 1999, defendants submitted by Federal Express a notice of Removal of Civil Action Number DCD99-0506 (503), of The Court of First Instance, Bayamón Part, filed by Plaintiff, *Asociación de Propietarios de la Urbanización Dorado Reef, Inc. v. Edward S. Irons*, his wife, Mary Lee Irons, and the conjugal partnership between them.

2. Plaintiff filed sue against defendant claiming the amount of $26,010.71, owed by defendant for maintenance fees of their property integrated to the Dorado Reef Community.

3. Even though, defendants are citizens of the State of Washington, D.C., the amount in controversy does not need the requirement established by Title 28 § 1332 for Diversity of Citizenship Jurisdiction.

4. Plaintiff opposes defendant's request for removal, since this Honorable Court lack jurisdiction over the controversy.

5. In a frivolous attempt to obtain jurisdiction defendants have filed a counterclaim for alleged damages in excess of two hundred thousand dollars ($200,000.00), suffered as a result of Dorado Reef actions for collecting the moneys owed.

6. Even more, in order to meet the requirement of amount in controversy, defendant's alleges that, by December 31, 2003, plaintiff's claim will accumulate to the point that it will exceed seventy five thousand dollars ($75,000.00). Therefore, according to the allegations, the amount in controversy will exceed seventy five thousand dollars ($75,000.00).

7. Defendant apparently have forgotten that, in order for this Court to achieve jurisdiction, the requirement must be met at the time of filing and not by the end of the litigation.

WHEREFORE, we respectfully request for this Honorable Court to deny defendant's request for removal of the case filed against them before the Court of First Instance, Bayamón Part.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of July 1999.

I hereby certify that a true and exact copy of this motion has been sent by regular mail to Edward S. Irons, 700–13th Street, N.W., Suite 950, Washington, D.C. 20005.

DE LA CRUZ SKERRETT
P.O. Box 9020844
San Juan, Puerto Rico 00902-0844
Tel: 723-5500
Fax: 723-5746

By: /s/ Jose de la Cruz Skerrett
JOSE DE LA CRUZ SKERRETT
USDA/PR Attorney: 118808

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No: DCD 99-0506(503)

ASOCIACION DE PROPIETARIOS DE
LA URBANIZACION DORADO REEF, INC.
Plaintiff,

v

EDWARD S. IRONS, MARY LEE IRONS, his wife and the conjugal partnership between them
Defendants-Petitioners.

NOTICE OF REMOVAL

Petitioners, who are the defendants in this action (hereinafter "defendants"), appearing *pro se*,[3] state as follows.

PRELIMINARY STATEMENT

Defendants desire to exercise their rights under the provisions of 28 U.S.C. § 1441, *et seq*. to remove this action from the Commonwealth of Puerto Rico, Court of First

---

[3] Defendant Edward S. Irons is admitted to practice law before and is a member in good standing of the Bar of, among others, the Supreme Court of the United States, the United States Courts of Appeals for the District of Columbia and the Federal Circuit, the United States District Court for the District of Columbia, and the Superior Court of the District of Columbia.

Defendant, Mary Lee Irons, wife of Edward S. Irons, is not a lawyer.

This *pro se* appearance is a consequent from the circumstances set forth at page 9.

Review, Bayamon Superior Part, where the said cause is now pending under the style of *Asociacion de Propietarios de la Urbanization Dorado Reef, Inc. v. Edward S. Irons, et al.*, Civil No. DCD-99-0506(503).

This notice is timely under 28 U.S.C. § 1446(b) in that defendants have not been served with the complaint or summons in Civil No. DCD 99-0506(503). Defendants first learned of the pendency of that action on or about May 17, 1999, and thereafter on or about May 21, 1999 obtained a copy of the complaint in Spanish (Exhibit 1 hereof) and a translation thereof on May 26, 1999 (Exhibit 2 hereof)[4] and of the other papers then of record in the Puerto Rico Court of First Review.

The Notice of Removal is transmitted to the Clerk of this Court by courier for receipt and filing on June 8, 1999. Attached to this Notice of Removal are copies, in Spanish, of the Complaint and Summons in the aforesaid Civil Action DCD 99-0506(503) as filed in the Bayamon, Puerto Rico Court of First Review.

A true copy of this Notice of Removal is concurrently transmitted by certified mail to the Clerk of the said Court of First Review to effect removal pursuant to 28 U.S.C. § 1446(e).

A true copy of this Notice of Removal was served by mail, on June 7, 1999, on the plaintiff's counsel of record, Jose E. De La Cruz Skerrett, at the address set forth at page 5 of the complaint, to wit: Post Office Box 9020844, San Juan, Puerto Rico, 00902-0844.

---

[4] The translation is subject to correction should errors appear.

II. RELATIONSHIP OF THIS CASE TO CIVIL ACTION NO. 0000024-99 PENDING IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

On *January 4, 1999*, defendants filed and served Civil Action No. 0000024-99 in the Superior Court of the District of Columbia (Exhibit 3), captioned *Mary L. Irons v. Asociacion de Propeitarios de la Urbanizacion Dorado Reef, Inc.* That complaint was served on the defendant in that action on January 13, 1999. A First Amended Complaint in Civil Action 0000024-99 was filed and served on February 22, 1999. The Superior Court Complaint in Civil Action 0000024-99 includes a demand for trial by jury.

The issues raised by the complaint in this Puerto Rico action filed on February 16, 1999 are in many respects the same as the issues first raised by the District of Colombia action first filed January 4, 1999 and served on January 13, 1999. In fact, Part IV, paragraphs 15-20, of the Complaint in this Puerto Rico action specifically address the issues, including defendants' claim for damages against plaintiff, raised in the first-filed District of Columbia action.

In particular, paragraph 17 of the complaint in this Puerto Rico action states:

> 17. Defendants Irons have exceeded the limits when filed a complaint in a court with lack of jurisdiction, Superior Court, Civil Section of the District of Columbia, under case No. 99-CA-000024, where the plaintiff party is Mary Lee Irons, in a complaint subscribed by her husband and a co-defendant in this action Edward S. Irons. In said complaint, the Irons claim, frivolously and maliciously, not having the obligation to pay the quotas of the Association, and request remedies for damages against the Association.

The "damages" as claimed in the District of Columbia complaint (Ex. 3) total $200,000. The "Prayer" of that complaint seeks a judgment:

> (e) ordering the defendant Association to pay compensatory damages to Irons in an amount to be determined, but not less than one hundred thousand ($100,000) dollars for the Association's several assertions of claims against Irons for "maintenance fees";
>
> (f) ordering the defendant Association to pay compensatory damages in the amount of one hundred thousand ($100,000) dollars to Irons for breaking and entry into and the theft of property from the Irons property and for the violation of Irons' right to the quiet enjoyment of said property at and during a time that the defendant Association had requested, been granted and assumed responsibility for the security of said property;
>
> (g) enjoining the defendant Association from asserting or attempting to collect any monetary claim purportedly imposed on Irons whether pursuant to the by-laws of the Association or otherwise;

The plaintiff in the Puerto Rico action seeks a determination that the District of Columbia action is "frivolous[] and malicious[]" (complaint ¶17) and "without merit" (¶19) and, on the basis of that requested determination, an "order" requiring defendants "to pay attorneys' fees and legal expenses" (part V) incurred by the plaintiff in defense of the first-filed District of Columbia action.

III. SHORT STATEMENT OF GROUNDS FOR REMOVAL

First Ground

It appears from the complaint (Exs. 1 and 2) that this is a civil action in which there exists diversity between the plaintiff, a Puerto Rico corporation (Ex. 2, ¶1), and

defendants, who are citizens of the District of Columbia (Ex. 2, ¶2), and that the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs; wherefore, there is original jurisdiction in the district courts of the United States and Puerto Rico as provided in 28 U.S.C. § 1332.

(i) *Diversity*—The complaint (Ex. 2) alleges that "1. Plaintiff . . . is a non-profit corporation organized under the Corporations General Law of the Commonwealth of Puerto Rico" and that "2. Defendants . . . are residents of . . . Washington, D.C.".

(ii) *Amount in Controversy*—

(a) As part II hereof shows, the amount the parties are really contesting in this case includes the defendants' damage claims in excess of $200,000, as well as plaintiff's claim for unliquidated damages measured by "attorneys' fees and legal expenses" which may be incurred by plaintiff in an effort, if successful, to obtain a ruling that defendants' claims are "without merit". On this ground alone, the requirement that the amount in controversy exceed $75,000 is satisfied.

(b) The complaint (Ex. 2) also shows the $75,000 amount in controversy is further satisfied by the allegations set forth in paragraphs 10 and 12-14. These allegations assert against defendants an obligation to pay, for so long as defendants own certain real property located in Dorado Reef Puerto Rico, "quotas", "interest" and "delay charges" which obligations are "cumulative" until payment in full.

It is apparent on the face of these complaint paragraphs that the plaintiff's claim will accumulate at the annual rate of $10,000± and will exceed $75,000 by December 31, 2003—

perhaps even before this litigation is concluded. On this basis also, the amount that the parties are really contesting exceeds $75,000.

To that amount, moreover, must be added plaintiff's claim for unliquidated "attorneys' fees and legal expenses incurred by the Association in this action as to make defendants comply with the payment of quota . . ." (complaint Part V, Remedies).

Second Ground

It also appears from the complaint that this is a civil action in which the district courts of the United States and Puerto Rico have been given original jurisdiction because it necessarily subsumes and requires this court to determine an issue that arises under the Seventh Amendment to the Constitution of the United States that guarantees defendants' right to a trial by jury. Each of the District of Columbia complaints (see Ex. 3) and the defendants' Answer in this case (which will be filed within five days hereafter) include a jury trial demand, *i.e.*, "trial by jury on all issues so triable". In the Puerto Rico Court of First Review where this case was filed, jury trial is not available.

Removal is essential to preserve defendants' timely exercise of their Constitutional right to a jury trial. A serious question as to the Constitutionality of 28 U.S.C. § 1441 would be raised by any remand after removal. The presence of that Constitutional issue is inherent in the very act of filing by plaintiff of the complaint in the Puerto Rico Court of First Review, and, by so doing, not only depriving defendants of a jury trial, but also requiring defendants to proceed in the Spanish language.

Third Ground

Actually, the complaint in this action constitutes artful pleading by omitting aspects of the controversy between the parties first placed in issue in the District of Columbia,

thereby avoiding *haec verba* pleading of a claim for $75,000, exclusive of interest and costs. However, a plaintiff may not defeat removal by such "artful pleading". *See Rivet v. Regions Bank of Louisiana*, 118 S.Ct. 921, 925 (1998).

Fourth Ground

Removal is appropriate because this case satisfies the purpose of diversity jurisdiction and of removal based on diversity.

The purpose of diversity jurisdiction as authoritatively announced in 1809 by Chief Justice Marshall in *Bank of the United States v. DeVeaux*, 9 U.S.(5 Cranch) 61, 87 is to prohibit non-resident litigants from local bias. The same purpose is stated in the *1998* edition of Moore's *Federal Practice and Procedure* ("It is generally accepted that diversity jurisdiction was established to provide access to a competent and impartial tribunal, free from local prejudice or influence . . ."; § 5.06[1], p. 5-19).

In the circumstances of this case, however, defendants need not rely solely upon "local prejudice or influence". To the contrary, defendants are prejudiced, without more, by the mere fact that Commonwealth Court proceedings preclude a jury trial and are primarily in Spanish.

There is also cogent evidence directly present in the circumstances of this case to demonstrate a local bias against defendants. Specifically, defendants have been forced to proceed *pro se* because San Juan counsel first agreed to represent defendants and then on June 4, 1999 reneged. Actually, bias against defendants appears to be rampant in the context of Dorado Reef—a matter which can be more fully developed, if necessary, in opposition to the motion to remand.

/s/ Edward S. Irons
EDWARD S. IRONS

/s/ Mary Lee Irons
MARY LEE IRONS
700 13th Street, N. W.
Suite 950
Washington, D. C. 20005
(202) 626-4480 - phone
(202) 626-4462 - fax

[Translation]

IN THE COMMONWEALTH OF PUERTO RICO
COURT OF FIRST REVIEW
BAYAMON SUPERIOR PART

Civil No. DCD 99-0506(503)

ASOCIACIÒN DE PROPRIETARIOS DE LA URBANIZACION DORADO REEF, INC.

Plaintiff,

v.

EDWARD S. IRONS, his wife, MARY LEE IRONS and the conjugal partnership constituted collection of money between them,

Defendants.

COMPLAINT

TO THE HONORABLE COURT:

Comes now plaintiff through its undersigned legal counsel, and very respectfully represents, avers and prays:

I. IDENTIFICATION OF THE PARTIES

1. Plaintiff, Asociacion de Propietarios de la Urbanización Dorado Reef, Inc., is a non-profit corporation organized under the Corporations General Law of the Commonwealth of Puerto Rico to administrater and maintain the common areas of the properties located at Urbanización Dorado Reef, with the following address 89 Boulevard Miramar, Dordo Reef, Dorado, Puerto Rico 00646.

2. Defendants, Edward S. Irons and Mary Lee Irons, married to each other and owners of a property described

hereinafter, located and protected tenant of Urbanización Dorado Reef, in Dorado, and both are residents of 3945 52nd St. N.W. Washington, D.C. 20016 and hence citizens of the District of Columbia.

II. RELEVANT FACTS OF THE CAUSE OF ACTION

3. Plaintiffs Edward S. Irons and Mary Lee Irons, are owners of the a 2,000 square meters parcel of land, which, by virtue of Public Deed executed on December 7, 1993, constituted part of the Urbanización Dorado Reef.

4. The integration of the 2,000 square meter parcel of land together with its building to the Urbanización de Dorado Reef was made under certain conditions and limitations. With the purpose of establishing which were these limitations and conditions, that did not apply to defendants, at the moment of integration of the property to Urbanización Dorado Reef, it was translated to the English language the Declaratory Constitutive Deed of the Association and the clauses that did not apply to defendants were crossed out.

5. Among the clauses that remained in complete effect for both parties were those related to the quotas established by the Association for the maintenance of the common areas, security services, and other services to which the Association will be responsible for the benefit of the owners.

6. Defendants Irons, paid the quotas of the Association for the year 1995, which, at that time, amounted to $4,128.00. Defendants Irons, however, did not pay the quotas of the Association during the calendar year 1994, as well as the quotas since January 1996 until the present.

7. In a letter that defendants addressed to the Acting Administrator of the Association in connection with the quota for year 1994, defendants Irons did not refuse to pay the quotas, however, they requested specific information to make payment relative to said calendar year.

8. Defendants Irons have refused to pay the quota of the Association since 1996, alleging that they were not obligated to pay the quota established by the Association which is contrary to the explicit language in the Deed through which they purchased and integrated the property to the Urbanización Dorado Reef.

9. Defendants Irons received the benefit of the services rendered by the Association relative to the maintenance of the entries to their property and common areas, the protection that provides the fence that surrounds the Urbanization and the security service of the urbanization.

III. CAUSE OF ACTION

10. Defendants are obligated to pay the quotas fixed by the Association for the calendar years 1994, 1996, 1997, 1998, including the current year beginning January of 1999 until payment in full.

11. Said obligation for the payment of the quotas fixed by the Association arises from the obligations assumed by defendants Irons in the Deed that incorporates and integrates into Urbanización Dorado Reef, their 2,000 square meter parcel of land and the building constructed on it.

12. At the time this complaint was filed, defendants Irons owed $20,418.00 to the Association, which is described as follows:

Year	Maintenance Balance	Interests	Delay Charges	Total
1994	$-----	$268.32	$72.00	$340.32
1995	$1,928.00	$763.68	$72.00	$2,763.68
1996	$4,490.00	$810.39	$80.00	$5,380.39
1997	$6,500.00	$1,248.66	$120.00	$7,868.66
1998	$7,500.00	$2,037.66	$120.00	$9,657.66
Total	$20,418.00	$5,128.71	$464.00	$26,010.71

13. In addition, defendants will accumulate a debt until payment of a monthly quota of $625.00 beginning on January of 1999. By virtue of this, the outstanding balance of the amount claimed in this complaint will be accumulative for the quota and for the penalties incurred for the delays in payment.

14. That by virtue of the Declaratory Deed and By Law of the Association, the owners that are in arrears in their payment of quotas will be subject to a 12% penalty over the accumulated debt. For this reason, defendants Irons owe $5,128.71 for penalties, which will be accumulative until payment is made in full.

IV. SPECIAL ALLEGATION OF TEMERITY

15. The party defendant has acted with extraordinary temerity before the claim for payment was made by the Association, which has anteceded in innumerable occasions the date of filing of this complaint.

16. Mr. and Mrs. Irons, inclusive, have challenged and questioned, in a temerary and recalcitrant manner, without base, legal or factual fundaments, the explicit obligation that arises from the documents executed by them, their obligation to pay the quotas fixed by the Association Dorado Reef according to the rules and regulations.

17. Defendants Irons have exceeded the limits when filed a complaint in a court with lack of jurisdiction, Superior Court, Civil Section of the District of Colombia, under case No. 99-CA-000024, where the plaintiff party is Mary Lee Irons, in a complaint subscribed by her husband and a co-defendant in this action Edward S. Irons. In said complaint, the Irons claim, frivolously and maliciously, not having the obligation to pay the quotas of the Association, and request remedies for damages against the Association.

18. The Association has tried without success to make defendants understand their obligations to pay the quotas of the Association and every effort to reach an agreement with

them has failed, due to defendants' unjustified defiance and without legal basis questioning of the obligations they assumed to pay quotas to the Association of Dorado Reef.

19. Defendants' temerarious and recalcitrant attitude has obliged the Association to incur in legal expenses, as well as to use the resources of the Board of Directors, to protect them from an action that has been filed without merit in a court without jurisdiction, and, in addition, to use the human resources of the Board of Directors to oblige defendants to comply with an obligation that was assumed by them previously.

20. The rules and regulations of the Association provide for remedies of attorneys' fees in legal actions taken in order to comply with the rules and regulations.

V. REMEDIES

WHEREFORE, it is requested that this Honorable Court grant this complaint and order Edward S. Irons and Mary Lee Irons to pay the quotas of the Association in the principal amounts detailed in the allegations in this complaint; to pay the penalties established in the regulations of the Association; to pay attorneys' fees and legal expenses incurred by the Association in this action as to make defendants comply with the payment of quota and in the interim defend itself from an action without merit filed before a court with lack of jurisdiction as is the District of Colombia; so as well as the payment of legal interests for the omission of payment of money that is the cause of action of this complaint.

In San Juan, Puerto Rico, this 16th day of February, 1999.

DE LA CRUZ SKERRETT
P O Box 9020844
San Juan PR 00902-0844
Tel. 723-5500
Fax. 723-5746
By: /s/ Jose E De La Cruz Skerrett

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

[Filed Jan. 4, 1999]

Civil Action No. 0000024-99

MARY L. IRONS
3945 - 52nd Street, N. W.
Washington, D. C. 20016
Plaintiff,

v.

ASOCIACION DE PROPIETARIOS DE LA
URBANIZACION DORADO REEF, INC.
90 Boulevard Miramar
Dorado, Puerto Rico 00646

c/o MR. DIEGO CHEVERE
PRESIDENT AND CHAIRMAN
DIEGO CHEVERE & CO.
FIRST STREET, SUITE 204
METRO PARQUE 7
GUAYNABO, PUERTO RICO 00968
Defendant.

COMPLAINT

I. JURISDICTION AND PARTIES

1. Jurisdiction is conferred by Title 11, D.C. Code, Section 921, as amended.

2. Plaintiff, Mary L. Irons ("Irons") and her husband, Edward S. Irons, are citizens of the District of Columbia residing at 3945-52nd Street, N. W., Washington, D. C. 20016.

3. Defendant Asociacion de Propietarios de la Urbanizacion Dorado Reef, Inc. ("Association"), is a corporation of the Commonwealth of Puerto Rico, having a place of business at 90 Boulevard Miramar, Dorado, Puerto Rico 00646.

4. This Court has personal jurisdiction over defendant pursuant to D.C. Code Section 13-423(a)(1) and (b) in that defendant has transacted business in the District of Columbia out of which the causes of action stated herein arose and by which the interests of the District of Columbia have been and are now being adversely affected and by which Irons and her husband have been and are now being damaged.

COUNT I

5. Irons owns certain real property located at 89 Boulevard Miramar, Dorado Reef, Dorado, Puerto Rico ("Irons property").

6. The defendant Association has asserted and is now asserting claims against Irons personally for "maintenance fees" purportedly assessed pursuant to its by-laws because of Irons ownership of the Irons property and has threatened and is now threatening to sue Irons in the courts of Puerto Rico to collect such "maintenance fees".

7. As a basis for its "maintenance fee" claim as alleged, defendant relies upon a certain "Agreement" by and between Irons and Dorado Reef, S.E., a Puerto Rico special partnership, and its affiliates Interlink S.E., a Puerto Rico special partnership, and Interlink Realty Corporation (hereinafter Interlink entities) executed on December 7, 1993.

8. Because the defendant Association is not a party to the said "Agreement", it is without any standing to assert any claim for "maintenance fees" or otherwise against Irons based on said "Agreement".

9. Irons is entitled to:

(a) a judgment for damages suffered in consequence of the defendant's assertion of the aforesaid "maintenance fee" claim,

(b) a declaration that the defendant lacks standing to assert such claim or any claim against Irons based on or related to the "Agreement",

(c) an injunction that bars any further assertion by defendant Association of any such claim against Irons, and

(d) monetary damages incurred by Irons consequent from the Association's baseless assertion of a "maintenance fee" claim against Irons.

COUNT II

10. The allegations of paragraphs 1 to 9 are restated.

11. The assertion of the maintenance fee claim or any claim against Irons based on or related to the said Agreement by the Association in the guise of, or on behalf of, or as a representative of Dorado Reef, S.E. or any Interlink entity is barred by the "Mutual Release" signed in October 1997 by Irons and the Interlink entities pursuant to the "Confidential Settlement Agreement" filed under seal of Civil Action Nos. 97-1056 and 97-1417 in the United States District Court for the District of Puerto Rico.

12. Irons is entitled to:

(a) a judgment for damages suffered in consequence of the defendant's assertion in violation of said mutual release of the aforesaid "maintenance fee" claim,

(b) a declaration that the defendant is barred by the Mutual Release from asserting such claim or any claim against Irons based on or related to the "Agreement",

(c) an injunction that bars any further assertion by defendant Association of any such claim against Irons, and

(d) monetary damages incurred by Irons consequent from the Association's baseless assertion of such claim against Irons.

COUNT III

13. The allegations of paragraphs 1 to 12 are restated.

14. Even if, contrary to Count I, the defendant has standing to assert a claim against Irons based on the aforesaid "Agreement" and even if said claim were not barred by the "Mutual Release" contrary to Count II, the defendant Association's maintenance_fee claim is baseless because Irons is not a member of the Association, and therefore is not subject to its by-laws or obligated to pay any assessments or claims of any nature which the defendant Association or its Board has asserted or may assert against Irons pursuant to its by-laws.

15. Irons is entitled to:

(a) a judgment for damages suffered in consequence of the defendant's baseless assertion of the aforesaid "maintenance fee" claim against Irons who is not a member of the defendant Association,

(b) a declaration that the defendant Association's assertion of such claim or any claim against Irons based on or related to the "Agreement" is a breach of said Agreement and a violation of Irons' rights, and

(c) an injunction that bars any further assertion by the defendant Association of any such claim against Irons.

COUNT IV

16. The allegations of paragraphs 1 to 15 are restated.

17. Dorado Reef is a housing development comprising some 20 acres located at Kilometer 12.1, Highway 693, Dorado, Puerto Rico.

18. Sometime prior to 1990, Irons acquired title to all of the real estate now comprising Dorado Reef. Thereafter said real estate was transferred to Dorado Reef, S.E., ("Dorado Reef"), a Puerto Rico special partnership, on terms and conditions requiring the construction of the Dorado Reef housing development.

19. A parcel of about one-half acre was expressly excluded from the transfer as alleged in paragraph 18. From the outset, it was the intention of Irons to construct on the excluded parcel a winter residence for the quiet enjoyment of her mature years. Such a home was, in fact, constructed on the excluded parcel which is now identified as 89 Boulevard Miramar, Dorado, Puerto Rico.

20. For a limited time and at the request of Dorado Reef to accommodate construction of the housing development, the excluded parcel was temporarily transferred to it subject to re-transfer without prejudice to Irons, which re-transfer was accomplished on or about July 26, 1993.

21. Thereafter, Dorado Reef and its affiliate Interlink entities through their common president, Federico Sanchez Febles, brought pressure upon Irons to subject the 89 Boulevard Miramar property to the "Agreement" referenced in paragraph 7 hereof.

22. Irons and Sanchez (for Dorado Reef and the Interlink entities) executed the "Agreement" on December 7, 1993 but only after it was modified at the insistence of Irons to vest expressly in Irons the contractual right to reject membership and the consequences of membership in the Association.

23. In November of 1995, Dorado Reef and the Interlink entities submitted to Irons in Washington, D.C. an invoice for "maintenance fees" payable to the Association pursuant to its by-laws upon the Irons property at 89 Boulevard Miramar. On December 28, 1995, Irons rejected that invoice, and exercised her contractual right under the Agreement to renounce membership in the defendant Association and all obligations including any maintenance fee obligation appurtenant thereto. At the same time, Irons stated that as a non-member of the Association, she had no obligation to pay maintenance fees and refused to do so.

24. For more than two years, the Association and the Interlink entities, recognizing the validity of the Irons refusal to pay maintenance fees, did not press for payment of the invoice or otherwise seek to collect maintenance fees from Irons.

25. On December 16, 1996, the Administrator of the defendant Association with the knowledge and approval of its President and Board Chairman, acknowledged in writing that:

(a) Irons was not a member of the Association;

(b) invited Irons to join the Association; and

(c) requested authorization for security guards employed by the Association to maintain the security of the Irons property, all at no cost to Irons; which request was granted.

26. In view of the facts and circumstances as alleged in paragraphs 23-25, Irons is entitled to

(a) a declaration that she is not a member of the Association and in any event is not liable for any maintenance fees imposed by the Association pursuant to its by-laws, and

(b) an injunction to preclude the assertion of any such maintenance fee claim.

COUNT V

27. The allegations of paragraphs 1 to 26 are restated.

28. More than two years subsequent to the December 28, 1995 rejection of the Association's maintenance fee claim as alleged in paragraph 23, the Association caused Irons to be notified on March 17, 1998 by its legal advisor that suit would be filed for collection of maintenance fees then in the amount of $15,167, which Irons allegedly had "failed to pay in accordance to the [Association's] By-laws which are applicable to your property due to [the Agreement]".

29. On June 14, 1998, the Association through its President and Board Chairman gave unqualified assurance to Irons at a face-to-face meeting with Edward S. Irons that the March 17, 1998 claim for maintenance fees would not be pressed and that if it was pressed, he would resign as president of the Association. Such assurance was dishonored in bad faith.

30. By letter to Irons in Washington, D. C. from the Association's President and Board Chairman in San Juan, Puerto Rico dated October 19, 1998, Irons was notified that suit would be filed to collect maintenance fees in an amount in excess of $20,000.

31. In an apparent attempt to justify this repudiation of the June 14, 1998 assurance that the maintenance fee claim would not be pressed and otherwise to justify the assessment of maintenance fees against Irons, the Association cited an opinion dated September 4, 1998 from the Association's legal advisor which apparently purports to assert that Irons, a non-member of the Association, is obligated to pay maintenance fees imposed by the Association pursuant to its by-laws; wherefore, the Association is under a "fiduciary duty" to dishonor the June 14, 1998 assurance to Irons that the maintenance fee claim would not be pressed and to sue Irons to collect said maintenance fees.

32. In fact, the said opinion lacks competence and objectivity, and therefore is a professionally irresponsible document conveniently phrased to give color of merit to the defendant's baseless maintenance fee claim.

33. Irons is entitled to compensatory damages for the baseless assertion of maintenance fee claims as alleged.

COUNT VI

34. The allegations of paragraphs 1 to 33 are restated.

35. Irons would not have signed the Agreement but for the provision inserted therein at the insistence of Irons as set forth in paragraph 22 vesting in Irons the right to renounce membership in the Association and obligations appurtenant thereto.

36. The Association acknowledged and concurred in Irons' understanding and interpretation of the intent of the Agreement by its acquiescence in Irons' refusal to pay maintenance fees from the December 28, 1995 to March 17, 1998 time period.

37. The Association's assertions of its maintenance fee claim on March 17, 1998 and October 19, 1998 were in bad faith and in furtherance of a scheme to acquire the Irons property by the Association for a clubhouse or for transfer to one or more of its members.

38. Irons is entitled to:

(a) monetary damages for the bad faith belated assertions of maintenance fee claims by the defendant Association in March and October of 1998, and

(b) an injunction to preclude any further assertion of such claim.

COUNT VII

39. The allegations of paragraphs 1 to 38 are restated.

40. Irons has been damaged repeatedly by the failure of the Association to discharge its responsibility for the security of 89 Boulevard Miramar in divers ways and at divers times, in that in Irons' absence, the security guards employed by the Association have negligently permitted unknown third parties to enter into, sleep in the beds of, use the toilets and other facilities, to steal property from and in other ways to damage the Irons property at 89 Boulevard Miramar.

41. Irons has been damaged by the theft of and damage to her property as alleged in paragraph 40.

42. Irons has suffered and is suffering mental distress consequent from the breach of her quiet enjoyment of her property.

43. Irons is entitled to compensatory damages for the theft of and damage to her property and for the mental distress which she has suffered as a result of the acts of defendant Association.

COUNT VIII

44. The allegations of paragraphs 1 to 43 are restated.

45. The defendant Association by and through its President and Board Chairman have authorized and instructed gardeners and grounds keepers employed by the Association to enter upon the Irons property to trim and cut vegetation and to commit other and continuing acts of trespass thereon.

46. Irons is entitled to damages for said trespass and to an injunction to preclude repetition of such trespass.

PRAYER

The Court is requested to enter judgment:

(a) declaring that it has jurisdiction of the parties and subject matter of this litigation;

(b) declaring that the defendant Association is without standing to enforce the "Agreement" against plaintiff Irons for the collection of maintenance fees or for any other purpose;

(c) declaring that plaintiff Irons is not a member of the Association and hence not subject to any claim for maintenance fees purportedly imposed against Irons under the Association's by-laws;

(d) declaring that all claims against Irons based on the Agreement are barred by the "Mutual Release" as alleged in paragraph 11;

(e) ordering the defendant Association to pay compensatory damages to Irons in an amount to be determined, but not less than one hundred thousand ($100,000) collars for the Association's several assertions of claims against Irons for "maintenance fees";

(f) ordering the defendant Association to pay compensatory damages in the amount of one hundred thousand ($100,000) dollars to Irons for breaking and entry into and the theft of property from the Irons property and for the violation of Irons' right to the quiet enjoyment of said property at and during a time that the defendant Association had requested, been granted and assumed responsibility for the security of said property;

(g) enjoining the defendant Association from asserting or attempting to collect any monetary claim pur-

portedly imposed on Irons whether pursuant to the by-laws of the Association or otherwise;

(h) ordering the defendant Association to pay Irons all reasonable attorneys' fees, expenses and costs incurred by reason of this litigation;

(i) declaring that the "Agreement", if construed or applied to require Irons to pay maintenance fees or any other obligations purportedly imposed by the Association pursuant to its by-laws, is void *ab initio*; and

(j) granting such other and further relief as the Court may deem just and proper.

/s/ Edward S. Irons
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Suite 950
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(202) 626-4480 - phone
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Dated: January 4, 1999

JURY TRIAL DEMAND

Plaintiff requests a trial by jury on all issues so triable.

/s/ Edward S. Irons
EDWARD S. IRONS